1998

HOUSE FINANCE

MINUTES

Arranged in reverse order

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, OCTOBER 27, 1998

3:35 P.M. HOUSE CHAMBERS

The House Committee met around the desk of Rep. Gray during a recess on Tuesday, October 27, 1998 at 3:35 p.m.

HB-37 EXPAND HOMESTEAD EXEMPTION

Rep. Neely moved to postpone this bill indefinitely. The voice vote was taken by members present and passed.

The meeting adjourned at 3:38 p.m.

Rep. Lyons Gray, Chairman

Cindy Brooks, Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 37

Short Title: Expand Homestead Exemption. (Public)

Sponsors: Representatives Allred; Brown, Buchanan, Cansler, Culp, Hardy, Justus, Moore, Morris, Rayfield, Sexton, Smith, Thompson, Warner, Weatherly, and Wood.

Referred to: Finance.

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE HOMESTEAD EXEMPTION AMOUNT AND THE INCOME LIMIT TO TWENTY-FIVE THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-277.1(a) reads as rewritten:

"(a) Exclusion. -- The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The first ~~twenty thousand dollars ($20,000)~~ twenty-five thousand dollars ($25,000) in appraised value of a permanent residence owned and occupied by a qualifying owner is excluded from taxation. A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than ~~fifteen thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000).

(3) Is a North Carolina resident.

An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent."

Section 2. G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first ~~twenty-thousand dollars ($20,000)~~ twenty-five thousand dollars ($25,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed ~~fifteen-thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above ~~fifteen-thousand dollars ($15,000),~~ twenty-five thousand dollars ($25,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 1998.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
H.B. 37 A BILL TO BE ENTITLED AN ACT TO INCREASE THE HOMESTEAD EXEMPTION AMOUNT AND THE INCOME LIMIT TO TWENTY-FIVE THOUSAND DOLLARS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☒ With an indefinite postponement report.

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

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

MINUTES

COMMITTEE ON FINANCE

THURSDAY, OCTOBER 15, 1998

10:00 A.M. ROOM 544-LOB

The House Committee on Finance met on Thursday, October 15, 1998 at 10:00 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Chairman Gray called the meeting to order.

SB-421 FREEZE PROPERTY TAX VALUES IN 2000

Rep. Brawley moved for adoption of the proposed committee substitute. So moved.

Rep. Allred explained the committee substitute. Rep. Hensley asked the sponsor about the date on Page 5, Section 6. He requested that staff amend the date. Rep. Decker questioned the sponsor and he responded. Rep. Capps and Rep. Rayfield had questions. Ms. Martha Harris, Bill Drafting Division responded. Rep. Rayfield then continued. Rep. Brawley commented on competition between counties. Rep. McCombs spoke against the bill. Rep. Allred responded. Rep. Luebke had questions for Rep. Allred and Chairman Gray. They responded. Rep. Nesbitt spoke about repealing the sales tax and how it will affect next years budget. Rep. Gray addressed his comments. Mr. Gerry Cohen, Director of Bill Drafting, also responded to Rep. Nesbitt's comments regarding city and county taxes.

Rep. Starnes moved for a favorable report, unfavorable to the original bill.

Rep. Carpenter asked Rep. Allred if he would be in favor of an amendment to allow county reimbursements. Rep. Allred responded. Chairman Gray asked if he would agree to send this back to Appropriations. Rep. Carpenter spoke again and questioned Rep. Gray. Rep. Gray responded. Rep. Carpenter asked if we were to pass this today without amendments, could it be addressed again next year to make changes. Rep. Allred responded. Rep. Cunningham requested that Mr. Ed Reagan, County Commissioners Association be allowed to speak. Mr. Reagan advised that they had serious concerns regarding this. Rep. Cunningham spoke again. Rep. Brawley asked Mr. Reagan some questions which he answered. Rep. Berry asked staff questions and Ms. Harris responded. Rep. Berry continued. Mr. Linda Millsaps, Fiscal Research

Division, addressed her comments. Rep. Berry then spoke and advised she would support this if the reimbursement provision and constitutional amendments were addressed. Rep. McCombs spoke again and advised if the counties were held harmless he couldn't support this bill. Rep. Rayfield spoke again.

Rep. Hensley sent forth an amendment. Chairman Gray read it and Rep. Hensley spoke and urged adoption. He then added a perfecting change to this amendment. The vote was taken and the perfecting amendment passed.

Rep. Baddour sent forth an amendment. Chairman Gray read it and Rep. Baddour urged support. Rep. Allred supported the amendment. Rep. Luebke questions staff and Ms. Harris replied. Rep. Capps asked for clarification and she responded again. Rep. Brawley spoke on the amendment and urged defeat. Rep. Allred added comments. Rep. Nesbitt spoke in support of the amendment. Rep. Starnes spoke against the amendment. Rep. Carpenter asked for the position of the County Commissioners Association. Mr. Reagan addressed members. Rep. Rayfield questioned Ms. Harris and she responded.

The vote was taken by show of hands at the request of Chairman Gray. The amendment failed, 12-12.

Rep. Carpenter sent forth an amendment and urged support. Rep. Allred supported this amendment. Rep. Cunningham spoke. Rep. Starnes requested the fiscal impact. Ms. Linda Millsaps answered. Rep. Luebke asked if this wouldn't increase session time if this passed. He feels this will slow down the bill and extend session. Rep. Nichols then spoke.

Rep. Hensley moved to let this lie upon the table. Seconded by Rep. Nichols. A roll call vote was requested. The vote was taken, 13-14.

Discussion continued. Rep. Dickson spoke. Rep. Nesbitt also questioned this extending session time. Rep. Howard requested a roll call vote on the Carpenter amendment. Rep. Cunningham urged defeat of the amendment. Rep. Brawley spoke on the amendment and urged defeat. Rep. Capps spoke in favor of the amendment. Rep. McCombs asked staff how this affects availability for the year. Ms. Millsaps answered. Rep. Starnes spoke again and urged defeat. Rep. Berry supported the amendment. Rep. Carpenter spoke a second time and urged support of his amendment. Rep. Nesbitt made additional comments. Rep. Decker made comments and urged defeat.

The roll call vote was taken and passed, 14-13.

Rep. Howard requested a roll call vote on the bill. Rep. Brawley asked this be postponed until November 15, 1998. Chairman Gray advised this was not an acceptable motion.

The roll call vote was taken and passed, 21-6.

The meeting adjourned at 11:40 a.m.

Rep. Lyons Gray, Chairman

Cindy Brooks

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

THURSDAY, OCTOBER 15, 1998

10:00 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Lyons Gray

BILL FOR DISCUSSION

SB-421 Freeze Property Tax Values in 2000

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 421
House Committee Substitute Favorable 8/24/98
Proposed House Committee Substitute S421-PCS9627-LC

Short Title: Homestead Property Tax Relief. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PROPERTY TAX HOMESTEAD EXEMPTION INCOME THRESHOLD TO TWENTY THOUSAND DOLLARS WITHOUT REIMBURSING LOCAL GOVERNMENTS FOR THE RESULTING REVENUE LOSS, AND TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO (I) INCREASE THE AMOUNT OF THE PROPERTY TAX HOMESTEAD EXEMPTION FOR LOW-INCOME ELDERLY AND DISABLED INDIVIDUALS IN THAT COUNTY AND (II) RAISE THE DEFINITION OF "LOW-INCOME" SO THAT MORE ELDERLY AND DISABLED INDIVIDUALS CAN QUALIFY FOR THE EXEMPTION.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 105-277.1(a)(2) reads as rewritten:

"(2) Has an income for the preceding calendar year of not more than ~~fifteen thousand dollars ($15,000).~~ twenty thousand dollars ($20,000)."

(b) G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed ~~fifteen thousand dollars ($15,000).~~ twenty thousand dollars ($20,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above ~~fifteen thousand dollars ($15,000),~~ twenty thousand dollars ($20,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

(c) This section becomes effective for taxes imposed for taxable years beginning on or after July 1, 1999.

Section 2. Section 2 of Article V of the North Carolina Constitution is amended by adding a new subsection to read:

"(8) Property tax homestead exclusion. If the General Assembly enacts legislation classifying and excluding from ad valorem taxation part of the value of the residence of each elderly or disabled individual whose income is below a maximum amount and who satisfies other conditions, the General Assembly may, notwithstanding subsection (2) of this section, enact a general law uniformly applicable throughout the State authorizing each county to increase the portion of a classified residence's value that is excluded in that county and to increase the maximum income threshold to qualify for the exclusion in that county."

Section 3. G.S. 105-277.1 is amended by adding a new subsection to read:

"(a1) Local Option Increase. -- The board of commissioners of a county may, by resolution, increase the amount of the exclusion provided in subsection (a) of this section, increase the maximum income threshold provided in subdivision (a)(2) of this section, or both. An increase adopted under this subsection shall apply uniformly within the county. The board of commissioners of a county may, by resolution, repeal or reduce an increase adopted under this subsection, but may not reduce the exclusion or the income threshold provided in subsection (a) of this section. A resolution changing the exclusion amount or the income threshold within

a county pursuant to this subsection shall become effective no earlier than for the taxable year beginning July 1 following adoption of the resolution."

Section 4. G.S. 105-309(f), as amended by Section 1 of this act, reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. If the county has increased the exclusion amount or the income threshold pursuant to G.S. 105-277.1(a1), the assessor shall substitute the applicable dollar amounts. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed twenty thousand dollars ($20,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above twenty thousand dollars ($20,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 5. G.S. 105-328 reads as rewritten:

"§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.

(a) ~~For~~ Except as provided in subsection (a1) of this section, for purposes of municipal taxation, all property subject to taxation by a city or town situated in two or more counties may, by resolution of the governing body of the municipality, be listed, appraised, and assessed as provided in G.S. 105-326 and 105-327 if, in such a case, in the opinion of the governing body, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. However, if, in such a case, the governing body ~~shall determine~~ determines that adoption of the

appraisals and assessments fixed by the counties will not result in uniform appraisals and assessments throughout the municipality, the governing body may, by horizontal adjustments, equalize the appraisal and assessment values fixed by the counties in order to obtain the required uniformity. Taxes levied by the city or town shall be levied uniformly on the assessments so determined.

(a1) This section does not apply to assessments of property that differ in any of the counties in which the city or town is located because of a local option adjustment in the homestead exclusion under G.S. 105-277.1(a1).

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subsection ~~(a), above,~~ (a) of this section, all property subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

(1) The governing body of the city or town shall appoint a municipal assessor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal assessor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as municipal assessor for the period of the unexpired term. Persons holding the position of municipal assessor on July 1, 1971, shall be deemed qualified to fill the position. A person appointed as a municipal assessor shall meet the qualifications and requirements set for a county assessor under G.S. 105-294.

(2) With the approval of the governing body, a municipal assessor may employ testers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.

(3) A municipal assessor and the persons employed by him have the same powers and duties as their county equivalents with respect to property subject to taxation by a city or town.

(4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this Subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the Property Tax Commission in the manner provided in this Subchapter for appeals from county boards of equalization and review and boards of county commissioners.

(5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be borne by the municipality for whose benefit the work is undertaken.

(6) The intent of this subsection (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property for municipal taxation equivalent to that established by this Subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, assessors, and persons employed by an assessor shall be the same as those provided in this Subchapter by, on, or against county boards of commissioners, boards of equalization and review, assessors, and persons employed by an assessor."

Section 6. The amendment set out in Section 2 of this act shall be submitted to the qualified voters of the State at the first statewide primary election to be held in 2000. The election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment authorizing the General Assembly to allow counties to (1) increase the property tax exemption for a residence owned by a low-income elderly or disabled person and (2) raise the definition of 'low-income' so more elderly and disabled persons can qualify for the exemption."

Section 7. If a majority of the votes cast on the question are in favor of the amendment set out in Section 2 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 8. The catch line of G.S. 105-277.1 reads as rewritten:

"**§ 105-277.1. Property ~~classified for taxation at reduced valuation.~~ tax homestead exclusion.**"

Section 9. The catch line of G.S. 105-277.1A reads as rewritten:

"**§ 105-277.1A. Property ~~classified for taxation at reduced valuation; duties of tax collectors;~~ tax homestead exclusion; reimbursement of localities for portion of tax lost.**"

Section 10. Section 1 of this act becomes effective for taxes imposed for taxable years beginning on or after July 1, 1999. Sections 3, 4, and 5 of this act become effective only if the constitutional amendment proposed by Section 2 of this act is approved as provided in Sections 6 and 7 of this act. If the constitutional amendment is approved, Sections 3, 4, and 5 of this act become effective when the State Board of Elections certifies the amendment to the Secretary of State. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 421 Draft
SHORT TITLE: Homestead Exemption

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	($ Millions) FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Counties and Cities		(2.0)	(2.0)*	(2.0)*	(2.0)*
			No General Fund Impact		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, cities and counties.

EFFECTIVE DATE: Effective for taxable years beginning on or after July 1, 1999.
* See Note in Assumptions and Methodology.

SUMMARY: The proposal increases the Homestead Property Tax Exemption income eligibility threshold to $20,000. The localities will be responsible for the entire revenue loss. The bill also authorizes a statewide vote to allow counties to increase the exemption, at their own cost. The vote will take place at the first primary election in 2000. If the option passes statewide the counties can increase the exemption locally, should they choose to do so.

ASSUMPTIONS AND METHODOLOGY: The Homestead Exemption is a partial exemption from property taxes for the residence of a person who is aged 65 or older, or totally disabled, and who has an income of less than $15,000. The exemption amount was last increased in 1996, when it was increased from $15,000 to $20,000 effective July 1, 1997. Before then the exemption was last increased in 1993 from $12,000 to $15,000. The income eligibility amount was last increased in 1996, when it was increased from $11,000 to $15,000. Before then the income threshold had last been increased in 1987, when it was increased from $10,000 to $11,000.

The proposal increases the Homestead Property Tax Exemption income eligibility threshold from $15,000 to $20,000. The localities will absorb the entire cost.

The current annual cost of the Homestead Exemption program is approximately $26 million. That cost is divided between the state and the localities. History indicates that approximately

80% of the total cost is related to the property exemption and 20% is related to the income requirement. The proposal increases the income threshold by 33.4%. If 20% of the cost of the program is devoted to the income threshold or $5.2 million ($26 million x 20%), then a 33.4 7% increase in the threshold equals $1.8 million ($5.2 million x 33.4%). An additional adjustment of $0.2 million was added to account for the disproportionate number of elderly that receive between $15,000 and $20,000 annually.

Note: The estimated local losses associated with the bill provide only a minimum for the out years. If the concept is approved by voters statewide, localities could take action to further increase the exemption and/or the income threshold. In that case, the revenue loss would grow as a direct result of the act of individual counties.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:
DATE: October 14, 1998

EXPLANATION OF SENATE BILL 421 (PCS)
Homestead Property Tax Exemption

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: December 8, 1997
SPONSOR: Senator Cooper

The proposed committee substitute for Senate Bill 421 make two changes related to the Property Tax Homestead Exemption. First, it raises the income ceiling for qualifying for the exemption from $15,000 to $20,000 effective with the 1999-2000 property tax year. Second, it authorizes a constitutional amendment to be considered by the voters in the 2000 primary that would give counties the option of increasing the property tax homestead exemption amount and the property tax homestead income ceiling amount above the Statewide amounts set by the General Assembly. A constitutional amendment is necessary because the constitution requires property tax classifications to be uniform statewide.

The homestead exemption is a partial exemption from property taxes for the residence of a person who is at least 65 years old or totally disabled and has an income of less than $15,000. The current homestead exemption amount is $20,000. The income used to determine the income eligibility amount includes moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses is included, whether or not the property is in both names.

The State reimburses local governments for part of their revenue loss due to the homestead exemption. This bill provides no reimbursement for losses due to the increase in the income ceiling or due to the local option increases counties may enact if the constitutional amendment is adopted.

Section 2 of Article V of the North Carolina Constitution authorizes the General Assembly to classify property for taxation on a Statewide basis. Property that is classified must be taxed by a general law that is uniformly applicable in every city, county, or other local government unit. Section 2 of the bill proposes an amendment to this section of the Constitution to give the General Assembly the authority to permit counties, on a local option basis, to adopt a higher homestead exemption amount and to apply higher maximum income levels for eligibility than are authorized by the General Assembly on a uniform, Statewide basis. Counties would not have the option of reducing the homestead exemption amount or the income eligibility amount lower than the amounts set by statute. The proposed constitutional amendment would be submitted to the voters in the Statewide primary election in 2000.

The exemption amount was last increased in 1996, when it was increased from $15,000 to $20,000 effective July 1, 1997. The exemption amount had last been increased in 1993 from $12,000 to $15,000. The income eligibility amount was last increased in 1996, when it was increased from $11,000 to $15,000 effective July 1, 1997. Before then, the income threshold had last been increased in 1987, when it was increased from $10,000 to $11,000.

The bill makes conforming changes to implement the constitutional amendment. Section 3 establishes the procedure for county commissioners to adopt a resolution increasing the amount of the exclusion and the maximum income threshold for the homestead exemption greater than the amounts set in G.S. 105-277.1(a). It also authorizes the Board to repeal or reduce any such increase, as long as the reduction is not below the uniform Statewide limits. Section 4 authorizes notice of the adopted levels. Section 5 would provide that for municipalities that lie in two or more counties, the municipalities may not adjust values because of different homestead exclusions adopted by the various counties. These statutory changes would be effective only if the constitutional amendment is approved by the voters. The increase in the income ceiling from $15,000 to $20,000 becomes effective whether or not the constitutional amendment is adopted.

Historically, local governments have borne most of the cost of the property tax homestead exemption. The homestead exemption was created in 1972. In 1982, the General Assembly established a mechanism for the State to reimburse cities and counties for a percentage of the revenue loss from the homestead exemption. From 1982 until 1985, the State reimbursed local governments for 15% of their loss. From 1985 until 1987, the State reimbursed local governments for 35% of the cost of the homestead exemption. From 1987 to 1991, the State reimbursed counties and cities for 50% of their losses from the homestead exemption. In 1991, the General Assembly froze the amount of reimbursements made to local governments to the amount each city and county was entitled to receive in 1991. That amount is approximately $7.9 million. No additional reimbursement was provided when the exemption amount was increased in 1993. When the homestead exemption was expanded in 1996, the General Assembly provided that, in addition to the existing $7.9 million reimbursement, the State would, for two years, reimburse local governments for one-half of the revenue loss attributable to the 1996 changes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 421
House Committee Substitute Favorable 8/24/98

Short Title: Freeze Property Tax Values in 2000. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION LIMITING THE VALUATION OF REAL PROPERTY FOR PROPERTY TAX PURPOSES TO ITS APPRAISED VALUE ON THE 2000-01 TAX BILL AND TO ADJUST THE APPRAISED VALUE TO REFLECT ITS SALES PRICE WHEN IT IS SOLD.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Article V of the North Carolina Constitution is amended by adding a new subdivision to read:

"(9) Property valuation. -- Notwithstanding any other provision of this Section, the fair market value of property for property tax purposes is the county assessor's valuation of real property as shown on the 2000-01 tax bill or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 2000 assessment. All real property not already assessed up to the 2000-01 fair market value may be reassessed to reflect that valuation.

The fair market value base may reflect from year to year the inflationary rate not to exceed two percent (2%) for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction, or other factors causing a decline in value."

Section 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election in November 1998. The election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment authorizing the General Assembly to set the fair market value of property for property tax purposes as the property's fair market value as shown on the 2000-01 tax bill or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 2000 assessment. The fair market value base may reflect from year to year the inflationary rate not to exceed two percent (2%) for any given year."

Section 3. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 421 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) Baddour
Sen.)

moves to amend the bill on page 2, line 36

( ) WHICH CHANGES THE TITLE

by through page 5, line 11,

by rewriting the lines to read

"Sections 3-5. Reserved"

Failed

SIGNED

ADOPTED _____ FAILED X TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 421, PCS Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 5, line 13

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"submitted to the qualified voters of the State at the statewide general election to"

AT THE 2002 GENERAL ELECTION

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 421 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Carpenter
(Sen.)

moves to amend the bill on page 1, line S 3-4

( ) WHICH CHANGES THE TITLE

by deleting "WITHOUT REIMBURSING" and substituting "WITH 50% REIMBURSEMENT TO";

and on page 3, lines 34-35,

by adding a new section to read:

"Section 4.1. GS 105-277.1A is amended by ~~[illegible]~~ adding two new subsections to read:

"(a2) On December 1, 1997, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue a list containing the name and address of each taxpayer who has qualified in that year for the exemption provided in GS 105-277.1 and whose income was above fifteen

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Page 2 of Carpenter Amendment

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 421 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page _____, line _____

( ) WHICH CHANGES THE TITLE

by _____

thousand dollars ($15,000). The list shall provide for each name the total amount of property exempted, and shall provide the tax rate the property is subject to and the product obtained by multiplying the tax rate by the amount of property.

(d2) Before May 31, 2000, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for the list provided under subsection (a2) of this section the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Each year thereafter, before May 31, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 2000."

SIGNED Tim Carpenter

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Hensley Motion to let lie upon the table

ROLL CALL VOTE

13 YES 14 NO = _____(TOTAL)

HB# _____
SB# _____

HOUSE STANDING COMMITTEE ON _____

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
✓		ALLRED			HIGHTOWER
		ARNOLD	✓		JARRELL
	✓	BADDOUR	✓		LUEBKE
	✓	BEALL			MCCOMAS
	✓	BERRY		✓	MCCOMBS
✓		BOYD-MCINTYRE			MCMAHAN
		BROWN			MERCER
		BUCHANAN			MILLER
	✓	CAPPS			MINER
	✓	CARPENTER			MORGAN
✓		COLE			MORRIS
		CRAWFORD			NEELY
✓		CUNNINGHAM	✓		NESBITT
	✓	DECKER	✓		NICHOLS
		DEDMON		✓	RAMSEY
	✓	EDDINS		✓	RAYFIELD
		FITCH			RUSSELL
		~~GAMBLE~~ Barefoot		✓	STARNES
		GOODWIN			TALLENT
		HACKNEY			WOMBLE
✓		HENSLEY	✓		WRIGHT
		HILL			
	✓	HOWARD			
✓		~~HUNTER~~ Bryant			

___	___	**CHAIRMEN**		
___	✓	GRAY	___	___
✓	___	BRAWLEY	___	___
✓	___	DICKSON	___	___
___	___	WILSON, C.	___	___
___	___		___	___
___	___		Ex officio Members	
___	___		___ ✓	Speaker Pro TemWOOD
___	___		___ ___	Majority LeaderDAUGHTRY
___	___		___ ___	Majority Whip

Final Vote on Bill

ROLL CALL VOTE

21 YES 6 NO = _____(TOTAL)

HB# _____
SB# 421

HOUSE STANDING COMMITTEE ON _____

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
✓		ALLRED			HIGHTOWER
		ARNOLD	✓		JARRELL
✓		BADDOUR		✓	LUEBKE
✓		BEALL			MCCOMAS
✓		BERRY	✓		MCCOMBS
	✓	BOYD-MCINTYRE			MCMAHAN
		BROWN			MERCER
		BUCHANAN			MILLER
✓		CAPPS			MINER
✓		CARPENTER			MORGAN
✓		COLE			MORRIS
		CRAWFORD			NEELY
	✓	CUNNINGHAM	✓		NESBITT
✓		DECKER	✓		NICHOLS
		DEDMON	✓		RAMSEY
✓		EDDINS	✓		RAYFIELD
		FITCH			RUSSELL
		~~GAMBLE~~ Barefoot	✓		STARNES
		GOODWIN			TALLENT
		HACKNEY			WOMBLE
✓		HENSLEY		✓	WRIGHT
		HILL			
✓		HOWARD			
✓		~~HUNTER~~ Bryant			

		CHAIRMEN		
✓		GRAY		
	✓	BRAWLEY		
	✓	DICKSON		
		WILSON, C.		
			Ex officio Members	
			✓	Speaker Pro TemWOOD
				Majority LeaderDAUGHTRY
				Majority Whip

Carpenter Amendment

ROLL CALL VOTE

14 YES 13 NO = _____(TOTAL)

HB# ____
SB# 421

HOUSE STANDING COMMITTEE ON _____

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
✓		ALLRED			HIGHTOWER
		ARNOLD	✓		JARRELL
	✓	BADDOUR		✓	LUEBKE
✓		BEALL			MCCOMAS
✓		BERRY	✓		MCCOMBS
	✓	BOYD-MCINTYRE			MCMAHAN
		BROWN			MERCER
		BUCHANAN			MILLER
✓		CAPPS			MINER
✓		CARPENTER			MORGAN
✓		COLE			MORRIS
		CRAWFORD			NEELY
	✓	CUNNINGHAM		✓	NESBITT
	✓	DECKER	✓		NICHOLS
		DEDMON	✓		RAMSEY
	✓	EDDINS		✓	RAYFIELD
		FITCH			RUSSELL
		~~GAMBLE~~ Barefoot		✓	STARNES
		GOODWIN			TALLENT
		HACKNEY			WOMBLE
✓		HENSLEY		✓	WRIGHT
		HILL			
✓		HOWARD			
✓		~~HUNTER~~ Bryant			

___	___	**CHAIRMEN**		
___	✓	GRAY	___	___
___	✓	BRAWLEY	___	___
___	✓	DICKSON	___	___
___	___	WILSON, C.	___	___
___	___		___	___
___	___		Ex officio Members	
___	___		✓ ___	Speaker Pro TemWOOD
___	___		___ ___	Majority LeaderDAUGHTRY
___	___		___ ___	Majority Whip

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 421
House Committee Substitute Favorable 8/24/98
Proposed House Committee Substitute S421-PCS6894-LC

Short Title: Homestead Property Tax Relief. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PROPERTY TAX HOMESTEAD EXEMPTION INCOME THRESHOLD TO TWENTY THOUSAND DOLLARS WITH FIFTY PERCENT REIMBURSEMENT TO LOCAL GOVERNMENTS FOR THE RESULTING REVENUE LOSS, AND TO AMEND THE CONSTITUTION OF NORTH CAROLINA, IF APPROVED BY THE VOTERS IN THE 2000 GENERAL ELECTION, TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO (I) INCREASE THE AMOUNT OF THE PROPERTY TAX HOMESTEAD EXEMPTION FOR LOW-INCOME ELDERLY AND DISABLED INDIVIDUALS IN THAT COUNTY AND (II) RAISE THE DEFINITION OF "LOW-INCOME" SO THAT MORE ELDERLY AND DISABLED INDIVIDUALS CAN QUALIFY FOR THE EXEMPTION.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 105-277.1(a)(2) reads as rewritten:

"(2) Has an income for the preceding calendar year of not more than ~~fifteen thousand dollars ($15,000).~~ twenty thousand dollars ($20,000)."

(b) G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the address and

telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed ~~fifteen thousand dollars ($15,000).~~ twenty thousand dollars ($20,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above ~~fifteen thousand dollars ($15,000),~~ twenty thousand dollars ($20,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

(c) This section becomes effective for taxes imposed for taxable years beginning on or after July 1, 1999.

Section 2. Section 2 of Article V of the North Carolina Constitution is amended by adding a new subsection to read:

"(8) Property tax homestead exclusion. If the General Assembly enacts legislation classifying and excluding from ad valorem taxation part of the value of the residence of each elderly or disabled individual whose income is below a maximum amount and who satisfies other conditions, the General Assembly may, notwithstanding subsection (2) of this section, enact a general law uniformly applicable throughout the State authorizing each county to increase the portion of a classified residence's value that is excluded in that county and to increase the maximum income threshold to qualify for the exclusion in that county."

Section 3. G.S. 105-277.1 is amended by adding a new subsection to read:

"(a1) Local Option Increase. -- The board of commissioners of a county may, by resolution, increase the amount of the exclusion provided in subsection (a) of this section, increase the maximum income threshold provided in subdivision (a)(2) of this section, or both. An increase adopted under this subsection shall apply uniformly within the county. The board of commissioners of a county may, by

resolution, repeal or reduce an increase adopted under this subsection, but may not reduce the exclusion or the income threshold provided in subsection (a) of this section. A resolution changing the exclusion amount or the income threshold within a county pursuant to this subsection shall become effective no earlier than for the taxable year beginning July 1 following adoption of the resolution."

Section 4. G.S. 105-309(f), as amended by Section 1 of this act, reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. If the county has increased the exclusion amount or the income threshold pursuant to G.S. 105-277.1(a1), the assessor shall substitute the applicable dollar amounts. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed twenty thousand dollars ($20,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above twenty thousand dollars ($20,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 4.1. G.S. 105-277.1A is amended by adding two new subsections to read:

"(a2) On December 1, 1999, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue a list containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1 and whose income was above fifteen thousand dollars ($15,000). On the list, the tax collector shall provide for each name the total amount of property

exempted, the tax rate the property is subject to, and the product obtained by multiplying the tax rate by the amount of property. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(d2) Before May 31, 2000, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for each list provided the preceding December 1 pursuant to subsection (a2) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 2000."

Section 5. G.S. 105-328 reads as rewritten:

"**§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.**

(a) ~~For~~ Except as provided in subsection (a1) of this section, for purposes of municipal taxation, all property subject to taxation by a city or town situated in two or more counties may, by resolution of the governing body of the municipality, be listed, appraised, and assessed as provided in G.S. 105-326 and 105-327 if, in such a case, in the opinion of the governing body, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. However, if, in such a case, the governing body ~~shall determine~~ determines that adoption of the appraisals and assessments fixed by the counties will not result in uniform appraisals and assessments throughout the municipality, the governing body may, by horizontal adjustments, equalize the appraisal and assessment values fixed by the counties in order to obtain the required uniformity. Taxes levied by the city or town shall be levied uniformly on the assessments so determined.

(a1) This section does not apply to assessments of property that differ in any of the counties in which the city or town is located because of a local option adjustment in the homestead exclusion under G.S. 105-277.1(a1).

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subsection ~~(a), above,~~ (a) of this section, all property subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

(1) The governing body of the city or town shall appoint a municipal assessor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal assessor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as municipal assessor for the period of the unexpired term. Persons holding the position of municipal assessor on July 1, 1971, shall be deemed qualified to fill the position. A person appointed as a municipal assessor shall meet the

qualifications and requirements set for a county assessor under G.S. 105-294.

(2) With the approval of the governing body, a municipal assessor may employ testers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.

(3) A municipal assessor and the persons employed by him have the same powers and duties as their county equivalents with respect to property subject to taxation by a city or town.

(4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this Subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the Property Tax Commission in the manner provided in this Subchapter for appeals from county boards of equalization and review and boards of county commissioners.

(5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be borne by the municipality for whose benefit the work is undertaken.

(6) The intent of this subsection (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property for municipal taxation equivalent to that established by this Subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, assessors, and persons employed by an assessor shall be the same as those provided in this Subchapter by, on, or against county boards of commissioners, boards of equalization and review, assessors, and persons employed by an assessor."

Section 6. The amendment set out in Section 2 of this act shall be submitted to the qualified voters of the State at the statewide general election to be held in 2000. The election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment authorizing the General Assembly to allow counties to (1) increase the property tax exemption for a residence owned by a low-income elderly or disabled person and (2) raise the definition of 'low-income' so more elderly and disabled persons can qualify for the exemption."

Section 7. If a majority of the votes cast on the question are in favor of the amendment set out in Section 2 of this act, the State Board of Elections shall

certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 8. The catch line of G.S. 105-277.1 reads as rewritten:

"**§ 105-277.1. Property ~~classified for taxation at reduced valuation.~~ tax homestead exclusion.**"

Section 9. The catch line of G.S. 105-277.1A reads as rewritten:

"**§ 105-277.1A. Property ~~classified for taxation at reduced valuation; duties of tax collectors;~~ tax homestead exclusion; reimbursement of localities for portion of tax lost.**"

Section 10. Sections 1 and 4.1 of this act become effective for taxes imposed for taxable years beginning on or after July 1, 1999. Sections 3, 4, and 5 of this act become effective only if the constitutional amendment proposed by Section 2 of this act is approved as provided in Sections 6 and 7 of this act. If the constitutional amendment is approved, Sections 3, 4, and 5 of this act become effective when the State Board of Elections certifies the amendment to the Secretary of State. The remainder of this act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☒ Committee Substitute for

S.B. 421 A BILL TO BE ENTITLED AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION LIMITING THE VALUATION OF REAL PROPERTY FOR PROPERTY TAX PURPOSES TO ITS APPRAISED VALUE ON THE 2000-01 TAX BILL AND TO ADJUST THE APPRAISED VALUE TO REFLECT ITS SALES PRICE WHEN IT IS SOLD.

☐ 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 # /), (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.

☐ 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)

NORTH CAROLINA GENERAL ASSEMBLY
PENDING HOUSE COMMITTEE ON
FINANCE

Date: 10/ 9/98
Time: 12:00 p.m.
Page: 1
Leg. day:H-211/S-212

1997-98 Biennium

BILL	SHORT TITLE		DATE	LATEST ACTION
H 2=	REDUCE FOOD TAX BY TWO CENTS	H	1-30-97	REF TO COM ON FINANCE
H 22	LOWER FOOD TAX BY ONE CENT	H	2- 3-97	REF TO COM ON FINANCE
~~H 37~~	~~EXPAND HOMESTEAD EXEMPTION~~	H	2- 4-97	REF TO COM ON FINANCE
H 38	NO ANNUAL CORP. REPORT/FEE	H	2- 4-97	REF TO COM ON FINANCE
H 44=	REINVESTMENT TAX CREDITS	H	2- 5-97	REF TO COM ON FINANCE
H 94=	ANNEXATION CHANGES	*H	4- 9-97	RE-REF COM ON FINANCE
H 119=	REMOVE SUNSET/PORTS TAX CREDIT	*H	5-28-97	RE-REF COM ON FINANCE
H 123	ELIMINATE FOOD TAX	H	2-12-97	REF TO COM ON FINANCE
H 124	ANNEXATION REFERENDA	H	4-16-97	RE-REF COM ON FINANCE
H 125	ROLL BACK GAS TAX	H	2-12-97	REF TO COM ON FINANCE
H 148	AUTOMATIC ANNUAL TAX REDUCTION	H	2-13-97	REF TO COM ON FINANCE
H 170	NO SALES TAX ON FUNERALS	*H	6-22-98	RE-REF COM ON FINANCE
H 242=	SCRAP TIRE DISPOSAL TAX AMENDMENT	*H	3-27-97	RE-REF COM ON FINANCE
H 284	BANKS/ALTERNATIVE MINIMUM TAX	H	2-20-97	REF TO COM ON FINANCE
H 293	PARKWOOD ANNEXATIONS	H	4-15-97	RE-REF COM ON FINANCE
H 294	PARKWOOD ANNEXATION REFERENDA	H	4-15-97	RE-REF COM ON FINANCE
H 317	**CLOSE TAX LOOPHOLE/FUND ALT. SCHO**	**H**	**2-25-97**	**REF TO COM ON FINANCE**
H 324	CORPORATE INCOME TAX REPORTS	H	2-26-97	REF TO COM ON FINANCE
H 326	SUBSIDIARY DIVIDEND DEDUCTION	H	2-26-97	REF TO COM ON FINANCE
H 357	GENERAL ANIMAL WASTE PERMITS	*H	5- 1-97	RE-REF COM ON FINANCE
H 368=	AMEND BILL LEE ACT	*H	3-19-97	RE-REF COM ON FINANCE
H 370	SAFETY EQUIPMENT SALES TAX REFUND	H	3- 3-97	REF TO COM ON FINANCE
H 380	HIGHWAY BONDING REQUIREMENTS	H	3-19-97	RE-REF COM ON FINANCE
H 401=	RAISE HOUSING BOND LIMIT	H	3-26-97	RE-REF COM ON FINANCE
H 451	ESC BENEFITS CHANGES	*H	4-28-97	RE-REF COM ON FINANCE
H 483=	SCHOOL BOARD "QUICK TAKE"	*H	5- 1-97	RE-REF COM ON FINANCE
H 486=	CASTLE HAYNE INCORPORATION	H	3-26-97	RE-REF COM ON FINANCE
H 500=	SUMMERVILLE INCORPORATED	H	3-26-97	RE-REF COM ON FINANCE
H 514=	PROPERTY TAX CLERICAL ERROR	H	3-13-97	REF TO COM ON FINANCE
H 518	FIVE-YEAR LICENSE PLATES	*H	6- 2-97	RE-REF COM ON FINANCE
H 574	EARMARK SALES TAX GROWTH/ONSLOW	H	3-20-97	REF TO COM ON FINANCE
H 580	NONRESIDENT HANDGUN PERMIT	*H	4-28-97	RE-REF COM ON FINANCE
H 591	REFUND $145 MILLION OF FOOD TAX	H	3-24-97	REF TO COM ON FINANCE
H 624	CERTAIN COUNTIES REVENUE OPTIONS	H	3-26-97	REF TO COM ON FINANCE
H 660	REFUND INTANGIBLES TAX-3	H	3-27-97	REF TO COM ON FINANCE
H 751	CABARRUS 3-YEAR SALES TAX/SCHOOLS	*H	6-26-97	RE-REF COM ON FINANCE
H 758=	ORANGE ADMISSIONS TAX	*H	6- 4-97	RE-REF COM ON FINANCE
H 762=	CHAPEL HILL OMNIBUS ACT	*H	5-21-97	RE-REF COM ON FINANCE
H 768	WATER AUTHORITY PROPERTY	*H	4-29-97	RE-REF COM ON FINANCE
H 865=	SNEADS FERRY INCORPORATED	*H	4-28-97	RE-REF COM ON FINANCE
H 919	BOAT FUEL TAX FOR BOATS	*H	6-22-98	RE-REF COM ON FINANCE
H 928	TAXPAYER PROTECTION AMENDMENT	H	4-14-97	REF TO COM ON FINANCE
H 970	MORATORIUM ON INTERNET TAX	H	5-15-97	RE-REF COM ON FINANCE
H 980=	CROP ALLOTMENT TAX APPRAISAL	*H	6-11-97	RE-REF COM ON FINANCE
H 987=	VENTURE CAPITAL INVESTMENT INCENT	H	4-23-97	RE-REF COM ON FINANCE
H1013=	MODIFY FOOD TAX/MERCHANT'S DISCOU	H	4-21-97	REF TO COM ON FINANCE
H1067	TAXPAYER PROTECTION ACT	H	4-21-97	REF TO COM ON FINANCE
H1077	MASSAGE AND BODYWORK THERAPIES	H	8-13-97	RE-REF COM ON FINANCE
H1084	SELF-SERVE STORAGE LATE FEES	*H	5-28-97	RE-REF COM ON FINANCE

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.

1997-98 Biennium

BILL	SHORT TITLE		DATE	LATEST ACTION
H1092=	REDUCE FARM/INDUSTRY FUEL TAX	*H	5- 7-97	RE-REF COM ON FINANCE
H1100	REGISTER OF DEEDS' MATTERS	*H	4-28-97	RE-REF COM ON FINANCE
H1113	EXEMPT FIRE AND RESCUE VEHICLES	H	4-21-97	REF TO COM ON FINANCE
H1128=	CPA EDUCATION REQUIREMENTS	H	6-22-98	RE-REF COM ON FINANCE
H1138=	PROPERTY TAX INTEREST/STUDY	H	4-21-97	REF TO COM ON FINANCE
H1188	SCHOOL DISTRICT SALES TAX REFUNDS	H	5- 1-97	REF TO COM ON FINANCE
H1194	RENTAL CAR USER SURCHARGE	H	5- 1-97	REF TO COM ON FINANCE
H1229	DARKER VEHICLE WINDOW FOR LUPUS	*H	8-12-98	RE-REF COM ON FINANCE
H1233	OPTIONAL SIMPLE INCOME TAX	H	5-19-97	REF TO COM ON FINANCE
H1268=	HOMESTEAD TAX REDUCTION	H	5-13-98	REF TO COM ON FINANCE
H1271	REPEAL STATE FOOD TAX	H	5-13-98	REF TO COM ON FINANCE
H1293	REFUND INTANGIBLES TAX WITH INTER	H	5-18-98	REF TO COM ON FINANCE
H1303	REPEAL STATE FOOD TAX-2	H	5-18-98	REF TO COM ON FINANCE
H1316	REPEAL INHERITANCE TAX	H	5-18-98	REF TO COM ON FINANCE
H1320	TAX ON MOVIES	H	6-17-98	RE-REF COM ON FINANCE
H1348	DEDUCTION FOR NET CAPITAL GAINS	H	5-20-98	REF TO COM ON FINANCE
H1353	BLADEN SALES TAX FOR SCHOOLS	H	5-20-98	REF TO COM ON FINANCE
H1370=	AMEND LOCAL SALES TAX	H	5-21-98	REF TO COM ON FINANCE
H1383=	MECK NECK	*H	6- 8-98	RE-REF COM ON FINANCE
H1403	ROWAN SALES TAX FOR SCHOOLS	H	5-21-98	REF TO COM ON FINANCE
H1404	EXPAND QUALIFIED BUSINESS CREDIT-	H	5-21-98	REF TO COM ON FINANCE
H1412	ROLLOVER OF GAIN/SMALL BUSINESS S	H	5-21-98	REF TO COM ON FINANCE
H1438=	CHILDHOOD LEAD EXPOSURE AMENDMENT	*H	9- 3-98	RE-REF COM ON FINANCE
H1443	AMEND WHITE GOODS TAX	H	5-25-98	REF TO COM ON FINANCE
H1449	EXEMPT DISABLED VETERAN VEHICLES	H	8-10-98	RE-REF COM ON FINANCE
H1461	FRANCHISE TAX CREDIT FOR CIP	H	5-25-98	REF TO COM ON FINANCE
H1484=	WATER QUALITY FEES	*H	9- 3-98	RE-REF COM ON FINANCE
H1492	CLEAN WATER/NATURAL GAS BONDS	*H	7- 2-98	RE-REF COM ON FINANCE
H1503=	CLEAN BURNING FUEL RATE	H	5-26-98	REF TO COM ON FINANCE
H1512	HAYWOOD SALES TAX/COURT FACILITIE	H	5-26-98	REF TO COM ON FINANCE
H1513	PRIVATE RETIREES TAX BREAK	H	5-26-98	REF TO COM ON FINANCE
H1626	HALIFAX LOCAL SALES TAX	H	5-28-98	REF TO COM ON FINANCE
H1643	TAX-FREE BACK TO SCHOOL	H	5-28-98	REF TO COM ON FINANCE
H1648	JOINT AGENCY SALES TAX REFUND	H	5-28-98	REF TO COM ON FINANCE
H1688=	ECONOMIC OPPORTUNITY ACT OF 1998	H	6- 2-98	RE-REF COM ON FINANCE
H1714	ELIMINATE MARRIAGE PENALTY	H	6- 1-98	REF TO COM ON FINANCE
H1748	EXEMPT CORP. WITHOUT PRESENCE	H	6- 1-98	REF TO COM ON FINANCE
S 317	LOCAL GOVERNMENT DEBT CHANGES	*H	5- 1-97	REF TO COM ON FINANCE
S 360	BOAT NUMBER FEES	*H	8-18-97	RE-REF COM ON FINANCE
S 421=	FREEZE PROPERTY TAX VALUES IN 200	*H	8-24-98	RE-REF COM ON FINANCE
S 453=	AIRPORT ECON. DEVELOP. ZONE ACT	H	5-29-97	RE-REF COM ON FINANCE
S 570	CLEAN WATER LICENSE PLATE	*H	6-19-97	RE-REF COM ON FINANCE
S 682	DURHAM CHARTER-2	*H	8- 6-97	RE-REF COM ON FINANCE
S 915	INTANGIBLES TAX REMEDY	*H	7- 2-97	REF TO COM ON FINANCE
S 942	BARBERS	H	5-14-97	REF TO COM ON FINANCE

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.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for

HB-22	Lower Food Tax by One Cent
HB-38	No Annual Corp. Report/Fee
HB-44	Reinvestment Tax Credits
HB-94	Annexation Changes
HB-124	Annexation Referenda
HB-125	Roll Back Gas Tax
HB-148	Automatic Annual Tax Reduction
HB-284	Banks/Alternative Minimum Tax
HB-293	Parkwood Annexations
HB-294	Parkwood Annexation Referenda
HB-317	Tax Loophole Out/Alt. School In
HB-324	Corporate Income Tax Reports
HB-326	Subsidiary Dividend Deduction
HB-380	Highway Bonding Requirements
HB-518, cs	Two-Year License Plates
HB-624	Certain Counties Revenue Options Menu
HB-660	Refund Intangibles Tax
HB-751, cs	Cabarrus 3-year Sales Tax/Schools
HB-768, cs	Water Authority Property
HB-919, cs	Boat Fuel Tax for Boats
HB-970	Moratorium on Internet Tax
HB-987	Venture Capital Investment Incentives
HB-1013	Modify Food Tax/Merchant's Discount
HB-1188	School District Sales Tax Refunds
HB-1268	Homestead Tax Reduction
HB-1271	Repeal State Food Tax
HB-1293	Refund Intangibles Tax With Interest
HB-1303	Repeal State Food Tax
HB-1316	Repeal Inheritance Tax
HB-1320	Tax On Movies
HB-1438, cs	Childhood Lead Exposure Amendment
HB-1484, cs	Water Quality Fees
HB-1714	Eliminate Marriage Penalty
HB-1748	Exempt Corporations Without Presence

x With an indefinite postponement report.

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

10-15-98
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Alicia Gregory	Poyner & Spruill
Ann Coan	BPMIL
Paul Wilms	NCHBA
Mike Caputo	NCBBA
Kelli Kukura	DuPont
Ron Sawyer	Lobbyist
Deborah Ross	ACLU
Stacy Flannery	NCANPHA
David Ane	New York.
Ed Regan	N.C.A.C.C
Andy Romanet	N.C.L.M.
Bob Pryor	Jordan Price

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

10-15-98
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Percy	Capitol Group
Frank Lewis	Sec. of State
Jack Cozart	PPAB
Rickie Strut	PPAB
Troy Green	SEANC
Katherine Joyce	SEANC
Wendy Mills	SEANC
Pokki Stowell	DOR
David Baker	DOR
John Bailey	DOR
Christi McCoy	NCAR
Rose Lungo	NCAR

VISITOR REGISTRATION SHEET

Horse Pasture — 10/15/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NC Wesleyan
[signature]	AT&T

MINUTES

COMMITTEE ON FINANCE

WEDNESDAY, OCTOBER 7, 1998

9:00 A.M. ROOM 544-LOB

The House Committee on Finance met on Wednesday, October 7, 1998 at 9:00 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Chairman Gray called the meeting to order.

SB-1554 MODIFY CONTROLLED SUBSTANCES TAX

Rep. Brawley moved for adoption of the proposed committee substitute for discussion. So moved. Sen. Rand explained the bill.

Rep. Brown moved for a favorable report, unfavorable to the original bill.

Rep. Nichols asked if there was any opposition. Sen. Rand replied "no." Rep. Starnes questioned the chart and Sen. Rand answered. Rep. Brown requested that Mr. Andy Vanori, Attorney General's Office, address members. Mr. Vanori spoke to members from the AG's perspective. Rep. Cole asked what happens to amounts previously collected. Sen. Rand responded. Rep. Cole had additional questions for Mr. Vanori which he addressed. Rep. Capps asked about other states and Mr. Robert Cansler, President of Chiefs of Police addressed members and responded.

The vote was taken and given a favorable report, unfavorable to the original bill.

Chairman Gray advised members of the decision of Judge Howard Manning's ruling on campaign contributions. He then asked Mr. Bill Gilkerson, Research Division, to explain the Ruling and how it will affect campaign contributions while members are still in session from lobbyists and Political Action Committees. Mr. Gilkerson provided a handout and then he explained. Mr. Andy Vanori, Attorney General's Office and Ms. Susan Nichols, Deputy Attorney General addressed members and answered questions. All House and Senate members had been invited to attend.

The meeting adjourned at 10:20 a.m.

Rep. Gray, Chairman

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

WEDNESDAY, OCTOBER 7, 1998

9:00 A.M. ROOM 544-LOB

CALL TO ORDER

BILL FOR DISCUSSION:

SB-1554 Modify Controlled Substances Tax

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1554
Second Edition Engrossed 8/10/98
House Committee Substitute Favorable 9/23/98

Short Title: Modify Controlled Substances Tax. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EXCISE TAX ON CONTROLLED SUBSTANCES.

Whereas, North Carolina enacted the Controlled Substances Tax Act in 1989 for the purpose of levying an excise tax to generate revenue for State and local law enforcement agencies and the General Fund and to collect taxes from persons engaged in a highly profitable activity that had escaped taxation; and

Whereas, the intent of the General Assembly in enacting this tax continues to be to raise revenue through a civil tax on this highly profitable activity; and

Whereas, the intent of the General Assembly in enacting this tax is not to create a criminal penalty, other than for nonpayment of the tax, above and beyond the criminal sanctions in the criminal code; and

Whereas, upon constitutional challenge on double jeopardy grounds by a defendant who had been assessed for the tax and also convicted of criminal drug charges, the North Carolina Court of Appeals held that the tax "was not predicated upon whether the taxpayer in possession of the controlled substance has been arrested or charged with criminal conduct, nor is it assessed on property that necessarily has been confiscated or destroyed"; and

Whereas, the court further held that the statute "is a legitimate and remedial effort to recover revenue from those persons who would otherwise escape taxation when engaging in the highly profitable, but illicit and sometimes deadly activity of possessing, delivering, selling, or manufacturing large quantities of

controlled drugs" and that the statute "does not have such fundamentally punitive characteristics as to render it violative of the prohibition against multiple punishments for the same offense contained in the Double Jeopardy Clause"; and

Whereas, that decision was affirmed on appeal to the North Carolina Supreme Court and not disturbed by the United States Supreme Court; and

Whereas, upon further challenge in the federal courts, the controlled substance tax has been found to be a criminal penalty, and a petition for certiorari is now pending in the United States Supreme Court; and

Whereas, according to law enforcement officials, the current market price of cocaine is approximately $100.00 per gram and hence the excise tax imposed herein is proportionately less than the tax imposed by the taxing authorities in many states upon cigarettes; and

Whereas, it is, therefore, the intent of the North Carolina General Assembly to modify the tax during the pendency of the appeal so that the tax may continue to be assessed in a manner consistent with the opinion now in effect, but to reinstate it as it read on January 12, 1998, if the United States Supreme Court reverses the lower court decision and finds the tax constitutional; and

Whereas, it is also the intent of the General Assembly that if the lower court decision is reversed, the higher tax rate should be reinstated; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-113.107(a) reads as rewritten:

"(a) Controlled Substances. -- An excise tax is levied on controlled substances possessed, either actually or constructively, by dealers at the following rates:

(1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant.

(1a) At the rate of three dollars and fifty cents ($3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this section.

(1b) At the rate of fifty dollars ($50.00) for each gram, or fraction thereof, of cocaine.

(2) At the rate of two hundred dollars ($200.00) for each gram, or fraction thereof, of any other controlled substance that is sold by weight.

(2a) At the rate of fifty dollars ($50.00) for each 10 dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight.

(3) At the rate of ~~four hundred dollars ($400.00)~~ two hundred dollars ($200.00) for each 10 dosage units, or fraction thereof, of any other controlled substance that is not sold by weight.

(a1) Weight. -- A quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a

controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers."

Section 2. G.S. 105-113.110A reads as rewritten:

"**§ 105-113.110A. ~~Interest and penalty.~~ Administration.**

~~The tax due under this Article shall bear interest at the rate established pursuant to G.S. 105-241.1(i) from the date due until paid. In addition, a dealer who neglects, fails, or refuses to pay the tax due under this Article is liable for a penalty equal to fifty percent (50%) of the tax.~~ Article 9 of this Chapter applies to this Article."

Section 3. This act is effective when it becomes law. If the United States Supreme Court rules in Lynn, et al. v. West, et al. that the provisions of Article 2D of Chapter 105 of the General Statutes, as they existed on January 12, 1998, are constitutional, then Section 1 of this act is repealed effective on the date the United States Supreme Court's ruling is issued.

EXPLANATION OF SENATE BILL 1554
Modify Controlled Substance Tax

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: October 5, 1998
SPONSOR: Senator Rand

Senate Bill 1554 changes the controlled substance tax in two ways, effective when it becomes law:

1. It reduces certain tax rates of the excise tax on controlled substances, in order to remove features of the tax found unconstitutional by the United States Court of Appeals for the Fourth Circuit in Lynn v. West.
2. It removes the 50% penalty for failure to pay the tax and provides instead that interest and penalties for this tax will be the same as for all other taxes.

The purpose of the tax rate reductions is to remove features of the tax that caused the federal court to hold it unconstitutional. If these rate reductions have the effect of rendering the tax constitutional, then the State can collect the tax. If a court later holds that these rate reductions did not render the tax constitutional, the State could be required to refund taxes illegally collected or to rescind criminal drug prosecutions. The rate reductions appear to address the federal court's concerns but, because the federal court did not provide a clear test of what would make the tax constitutional, there remains some risk that the tax might later be invalidated again notwithstanding the rate reductions. The issues, outlined below, are complex.

In Lynn v. West, the federal court ruled that the controlled substance tax was, "in reality," a criminal penalty rather than a tax, and could not be enforced without all the criminal procedure safeguards guaranteed by the Fifth and Sixth Amendments of the United States Constitution. As a result of the Lynn case, the Department of Revenue was forced to stop collecting the tax on the date the opinion was issued, January 13, 1998. The Department of Revenue did not stop collecting the tax on illicit spirituous liquor, however. The United States Supreme Court declined the review the Lynn case, so it is now the controlling law.

The double jeopardy clause was not an issue in the Lynn case because only the federal government, not the State, had brought criminal charges against Lynn for illegal drug possession. The double jeopardy clause protects against successive prosecutions by the same sovereign, but not against prosecutions by

different sovereigns. The holding in the Lynn case that the tax is a criminal penalty means, however, that North Carolina would not be able to collect the tax from an individual and also prosecute the individual for a criminal drug violation. Therefore, the State was required to drop criminal charges against some drug defendants who had also been assessed the controlled substance tax.

The federal court in the Lynn case analyzed the tax under the United States Supreme Court's 1994 Kurth Ranch[1] case holding Montana's illegal drug tax unconstitutional because it was a second punishment, not a true tax, and thus violated the double jeopardy clause of the Fifth Amendment. In analyzing a civil measure to determine if it is in fact a criminal penalty, the court will look first at whether the legislature intended it as a civil penalty and second, even if it is so intended, whether it is so punitive either in purpose or in effect to transform it into a criminal penalty.[2] The Court in the Kurth Ranch case stated that the tax must be examined as a whole to determine whether it has crossed the line to becoming a criminal punishment. Neither a high rate of tax alone nor an obvious deterrent purpose alone would make a tax a criminal punishment, but these factors are significant, the Court ruled. The Court found both these factors present in the Montana law, as well as the fact that the tax was conditioned on the commission of a crime and had no relationship to lawful possession.

In the Lynn case, the federal court found that all four of these same factors were present in North Carolina's controlled substance tax: a high rate of tax, a deterrent purpose, application only to illegal activity, and no relationship to lawful possession. For this reason, the court ruled that North Carolina's controlled substance tax is a criminal penalty. This bill would lower the tax rates, and the civil penalty for failure to pay, in the hope of addressing the first factor, high rates. It would be difficult to address the deterrent purpose of the tax, its application only to illegal drug possession, or its lack of a relationship to legal position.

Nearly a kilogram of cocaine was seized from Lynn in 1993. The tax rate was $200 a gram, with a penalty equal to 100% of the tax.[3] Although no evidence of the value of cocaine had been offered, the court found that its market value was $25,000 a kilogram, which translates to $25 a gram. Thus, the court found the tax rate to be eight times the market value of the cocaine, which, when

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[1] Department of Revenue v. Kurth Ranch, 511 U.S. 767 (1994).
[2] Hudson v. United States, 118 U.S. 488 (1997).
[3] The tax on marijuana is $3.50 a gram, except for separated stems and stalks, which are taxed at 40¢ a gram. The tax on "low-street-value" drugs is $50.00 for ten dosage units and the tax on other drugs not sold by weight is $400.00 for ten dosages units.

combined with the 100% tax penalty,[4] yielded a total tax that was sixteen times the market value of the cocaine. The tax rate in the Kurth Ranch case, by comparison, was eight times the market value of the drug. The Lynn court's concern with North Carolina's high tax rate was compounded by the fact that the full rate applies no matter how pure or dilute the controlled substance may be.

This bill provides a separate tax rate of $50 a gram for cocaine and changes the tax rate on drugs sold by dosage units from $400 to $200 per ten dosage units. Crack cocaine is sold in dosage units. The bill also reduces the 50% failure to pay penalty to 10%, to keep it in line with a pending reduction in the tobacco tax penalty. Based on the court's holding that cocaine's market value is $25 a gram, the proposed rate tax would be twice the market value; when the 10% penalty is added, the total would be only slightly more than twice the the market value. The bill does not address the court's concern that the same tax rate applies whether the substance is pure or dilute.

The General Assembly enacted the excise tax on controlled substances in 1989 as a means of generating revenue for State and local law enforcement agencies and for the General Fund. Under the law, a person who acquires illegal drugs is required to pay tax on them within 48 hours of acquiring possession if the tax has not already been paid as evidenced by a tax stamp. A person paying the tax is not required to disclose his or her identity and any information obtained in assessing the tax is confidential and cannot be used in a criminal prosecution other than a prosecution for failure to comply with the tax statute itself. Seventy-five percent of the revenue generated by assessments of the tax is distributed to the law enforcement agencies whose investigation led to the assessment. The remainder of the revenue is credited to the General Fund.

The North Carolina Court of Appeals upheld the constitutionality of the State's excise tax on controlled substances in 1996 and the North Carolina Supreme court affirmed March 7, 1997. Because the constitutionality of the tax depends on an interpretation of the federal constitution, the federal courts are not bound by the opinion of the North Carolina courts.

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[4] The 100% penalty was reduced to 50% in 1995. The tobacco tax penalty was also 50% at that time. Senate Bill 1241, expected to be enacted this session, will reduce the tobacco tax penalty to 10% to bring it in line with other taxes.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1554 (House Finance Committee Substitute)

SHORT TITLE: Modify Controlled Substances Tax

SPONSOR(S):

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($million)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	.65	1.3	1.3	1.3	1.3
Law Enforcement Agencies	1.95	3.9	3.9	3.9	3.9

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue - Unauthorized Substance Tax Division

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: This bill reinstates the excise tax on controlled substances, but reduces the tax rates.

BACKGROUND: The General Assembly enacted the excise tax on controlled substances in 1989 as a means of generating revenue for State and local law enforcement agencies and for the General Fund. Under the law, a person who acquires illegal drugs is required to pay tax on the drugs within 48 hours of acquiring possession if the tax has not already been paid as evidenced by a tax stamp. A person paying the tax is not required to disclose his or her identity and any information obtained in assessing the tax is confidential and cannot be used in a criminal prosecution other than a prosecution for failure to comply with the tax statute itself. Seventy-five percent of the revenue generated by assessments of the tax is distributed to the law enforcement agencies whose investigation led to the assessment. The remainder of the revenue is credited to the General Fund as a non-tax revenue.

In Lynn v. West, the United States Court of Appeals for the Fourth Circuit ruled that the controlled substance tax was, "in reality," a criminal penalty rather than a tax, and could not be enforced without all the criminal procedure safeguards guaranteed by the Fifth and Sixth Amendments of the United States Constitution. As a result of the Lynn case, the Department of Revenue was forced to stop collecting the tax on the date the opinion was issued, January 13, 1998. However, the Department of Revenue did not stop collecting the tax on illicit spirituous liquor.

The federal court in the Lynn case analyzed the tax under the United States Supreme Court's 1995 opinion holding Montana's illegal drug tax unconstitutional because it was a second punishment, not a true tax, and thus violated the double jeopardy clause of the Fifth Amendment. 970 grams of cocaine were seized from Lynn in 1993. The tax rate was $200 a gram, with a penalty equal to 100% of the tax.[1] The court concluded that the tax is a criminal penalty because the rate of tax appeared to be eight times the street value of the cocaine and, when combined with the 100% tax penalty[2], yielded a total tax that was sixteen times the street value of the cocaine. The court also based its ruling on the tax exemption for those who possess drugs legally and the tax's lack of a relationship to lawful possession.

The North Carolina Court of Appeals upheld the constitutionality of the State's excise tax on controlled substances in 1996 and the North Carolina Supreme Court affirmed March 7, 1997. Because the constitutionality of the tax depends on an interpretation of the federal constitution, the federal court in Lynn was not bound by the opinion of the North Carolina courts. The Department of Revenue is asked the United States Supreme Court to review and overturn the Lynn decision. On October 5, 1998, the U.S. Supreme Court let stand the federal appeals court ruling in Lynn.

ASSUMPTIONS AND METHODOLOGY:
The Department of Revenue has collected between $5 million and $6.5 million from the controlled substance tax each year since FY 1992-93. (see chart below)

	Assessments	Amount Collected
FY 92-93	3,406	$6,079,479
FY 93-94	4,230	$5,651,844
FY 94-95	4,984	$5,352,982
FY 95-96	5,026	$5,852,463
FY 96-97	6,096	$6,436,959
FY 97-98 (7 months)	3,036	$3,976,904

[1] The tax on marijuana is $3.50 a gram, except for separated stems and stalks, which are taxed at 40¢ a gram. The tax on "low-street-value" drugs is $50.00 for ten dosage units and the tax on other drugs not sold by weight is $400.00 for ten dosages units.
[2] The 100% penalty was reduced to 50% in 1995. The tobacco tax penalty is also 50%.

Before the court ruling, the Department was on pace to collect $8.3 million in FY 1997-98. The Department of Revenue's Director of the Unauthorized Substance Division had no explanation for the increase. If the program were renewed, the Director projected future year collections would average $6 to $7 million per year based on the previous tax rates. This fiscal note will assume the midpoint of this range or $6.5 million.

The controlled substance tax program ended in January 1998 except for voluntary installment payments, garnishment payments, and collections from those waiving their Lynn v. West created rights. Based on the court ruling, future year budget and revenue projections assume no collections from the controlled substance tax. With SB 1554, the controlled substance taxes are reinstated and the resulting tax collections are considered new revenue from a tax estimating standpoint. The Department of Revenue estimates a decline in revenues of 15% to 20% based on the lower tax rates in SB 1554. This estimate is based on the fact that half of the tax collection is from marijuana, which is unchanged, and the remaining half is from cocaine and other drugs. Applying a 20% reduction to the previous law collection rate of $6.5 million yields $5.2 million in annual controlled substance tax revenue. Of this amount, $3.9 million will go to law enforcement agencies (75%) and $1.3 million will go to the General Fund (25%). Due to the delay in passage of SB 1554, it is anticipated that the Department of Revenue would be unable to restart drug tax collections until January 1, 1999 and thus FY 1998-99 revenues will be half the annual estimate.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic & Martha Harris (Bill Drafting Division)
APPROVED BY:
DATE: October 6, 1998

Other States' Controlled Substances Taxes

State	Rate by Weight[1]	Rate by Dosage Unit	Marijuana	Notes
Alabama	$200/gram	$40	$3.50/gram	100% penalty; Upheld by State Court
Colorado	$1,000/ounce	NA	$100/ounce	
Connecticut	$200/gram	$40	$3.50/gram	Upheld by State Court
Florida	50% retail price	50% retail price	50% retail price	25% surcharge
Georgia	$200/gram	$40	$3.50/gram	
Idaho	$200/gram	$40	$3.50/gram	
Illinois	$500/gram	$80	$10/gram	
Iowa	$250/gram	$40	$5/gram	
Kansas	$200/gram	$40	$3.50	Upheld by State Court
Kentucky	$200/gram	$40	$3.50/gram	
Louisiana	$200/gram	$40	$3.50/gram	
Massachusetts	$200/gram	$40	$3.50/gram	
Minnesota	$200/gram	$40	$3.50/gram	
Nebraska	$150/gram	$10	$100/ounce	
Nevada	$1,000/gram	$40	$100/gram	Upheld by State Court
NC - Current	$200/gram	$40	$3.50/gram	Upheld by State Court
NC - Bill	$50/gram[2]	$20	$3.50/gram	
Oklahoma	$200/gram	$20	$3.50/gram	Upheld by State Court
Rhode Island	$200/gram	$40	$3.50/gram	
South Carolina	$200/gram	$40	$3.50/gram	Upheld by State Court
Texas	$200/gram	NA	$3.50/gram	
Wisconsin	$200/gram	$100/100 mg LSD	$3.50/gram	Upheld by State Court

[1] One gram is 0.035 ounces. One ounce is 28.350 grams

[2] Lower rate is for cocaine; rate stays at $200/gram for other controlled substances

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1554
Second Edition Engrossed 8/10/98
House Committee Substitute Favorable 9/23/98
Proposed House Committee Substitute S1554-PCS9624-LC

Short Title: Modify Controlled Substances Tax. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EXCISE TAX ON CONTROLLED SUBSTANCES.

Whereas, North Carolina enacted the Controlled Substances Tax Act in 1989 for the purpose of levying an excise tax to generate revenue for State and local law enforcement agencies and the General Fund and to collect taxes from persons engaged in a highly profitable activity that had escaped taxation; and

Whereas, the intent of the General Assembly in enacting this tax continues to be to raise revenue through a civil tax on this highly profitable activity; and

Whereas, the intent of the General Assembly in enacting this tax is not to create a criminal penalty, other than for nonpayment of the tax, above and beyond the criminal sanctions in the criminal code; and

Whereas, upon constitutional challenge on double jeopardy grounds by a defendant who had been assessed for the tax and also convicted of criminal drug charges, the North Carolina Court of Appeals held that the tax "was not predicated upon whether the taxpayer in possession of the controlled substance has been arrested or charged with criminal conduct, nor is it assessed on property that necessarily has been confiscated or destroyed"; and

Whereas, the court further held that the statute "is a legitimate and remedial effort to recover revenue from those persons who would otherwise escape taxation when engaging in the highly profitable, but illicit and sometimes deadly

activity of possessing, delivering, selling, or manufacturing large quantities of controlled drugs" and that the statute "does not have such fundamentally punitive characteristics as to render it violative of the prohibition against multiple punishments for the same offense contained in the Double Jeopardy Clause"; and

Whereas, that decision was affirmed on appeal to the North Carolina Supreme Court and not disturbed by the United States Supreme Court; and

Whereas, upon further challenge in the federal courts, the controlled substance tax was found in 1998 to be a criminal penalty, and the United States Supreme Court let the federal ruling stand; and

Whereas, according to law enforcement officials, the current market price of cocaine is approximately $100.00 per gram and hence the excise tax rate proposed by this act is proportionately less than the tax imposed by the taxing authorities in many states upon cigarettes; and

Whereas, it is, therefore, the intent of the North Carolina General Assembly to modify the tax in accordance with the recent federal court ruling, so that the tax may continue to be assessed in a manner consistent with the law as interpreted by the federal courts; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-113.107(a) reads as rewritten:

"(a) Controlled Substances. -- An excise tax is levied on controlled substances possessed, either actually or constructively, by dealers at the following rates:

(1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant.

(1a) At the rate of three dollars and fifty cents ($3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this section.

(1b) At the rate of fifty dollars ($50.00) for each gram, or fraction thereof, of cocaine.

(2) At the rate of two hundred dollars ($200.00) for each gram, or fraction thereof, of any other controlled substance that is sold by weight.

(2a) At the rate of fifty dollars ($50.00) for each 10 dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight.

(3) At the rate of ~~four hundred dollars ($400.00)~~ two hundred dollars ($200.00) for each 10 dosage units, or fraction thereof, of any other controlled substance that is not sold by weight.

(a1) Weight. -- A quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers."

Section 2. G.S. 105-113.110A reads as rewritten:

"**§ 105-113.110A. ~~Interest and penalty.~~ Administration.**

~~The tax due under this Article shall bear interest at the rate established pursuant to G.S. 105-241.1(i) from the date due until paid. In addition, a dealer who neglects, fails, or refuses to pay the tax due under this Article is liable for a penalty equal to fifty percent (50%) of the tax.~~ Article 9 of this Chapter applies to this Article."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1554 A BILL TO BE ENTITLED AN ACT TO AMEND THE EXCISE TAX ON CONTROLLED SUBSTANCES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill (# 2), ☐ ~~which changes the title~~, unfavorable as to ~~Senate~~ House committee substitute bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

North Carolina General Assembly
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October 7, 1998

TO: Members of the General Assembly.

FROM: William R. Gilkeson, Staff Attorney.

RE: Judge Howard Manning's Decision in *Winborne v. Easley*.

Yesterday, Judge Howard Manning of Wake County Superior Court announced a decision to invalidate a portion of G.S. 163-278.13B, the statute that limits contributions from lobbyists and lobbyist-connected political committees while the General Assembly is in regular session. The effect of his decision is that:

- Legislators and legislative candidates will still be barred while the session lasts from soliciting or receiving contributions from lobbyists or their PACs personally; but
- Political committees whose purpose is to assist a legislator or legislative candidate will not be barred.

Judge Manning is expected to sign and enter his order today.

The order enters a summary judgment in the lawsuit of Vaughan Winborne Jr., a non-incumbent candidate for House District 92. Mr. Winborne filed his lawsuit Friday, October 2. He alleged that the statute was an infringement on the First Amendment rights of himself and other non-incumbent candidates for the General Assembly, as well as lobbyists and PACs desiring to contribute to non-incumbent candidates. Limiting contributions could only be done if narrowly tailored to meet a compelling state interest, he said. The prevention of "influence peddling" might be a compelling state interest, he said, but extending the ban to challengers exceeded the purpose. Moreover, he said, the statute gave incumbent candidates control over how long the ban would extend because they had control over how long the session would last. If the session lasted much longer, the ban on lobbyist/PAC contributions would be a total one, because the election is only a month away. Because of the importance of time, Mr. Winborne asked the court to grant a preliminary injunction against the enforcement of the statute against challengers.

The State, represented by the Attorney General, argued that there is a compelling state interest in preventing corruption or the appearance of corruption. They said the statute is narrowly tailored to prevent those things because it attempts to remove those with an interest in legislation, i.e., lobbyists and their PACs, from funding legislative races while legislators are in session making decisions on legislation. Legislators and candidates may solicit and receive contributions from non-lobbyists while the legislature is in session. Moreover, incumbent legislators are at least as burdened by the ban as challengers, the State said, and perhaps more, since incumbents typically get more of their money from PACs than challengers do. No one incumbent has the power to end the session. The State further argued that any change in the law would add to the disruption the election process has already suffered this year.

Judge Manning decided that the statute is indeed required to be narrowly tailored to meet a compelling state interest. The compelling state interest is to prevent corruption and the appearance of corruption. He found that much of the statute was narrowly tailored to meet that interest. "To prevent the general view and appearance that legislation is `for sale' to special interest groups and their lobbyists, the lobbyist and related political committees are not permitted to roam the halls of the General Assembly with checkbooks in hand or to cajole or threaten to withhold contributions from members of the General Assembly. . . The Legislature has recognized that one of its own may be wrongfully influenced by money given to him or her during the session, but also that the threat of money given to an opponent if the legislator fails to go with the program sought by the lobbyist. "

But Judge Manning found that the extension of the ban to contributions made to "a political committee the purpose of which is to assist a member or members of or candidate for the Council of State or General Assembly " went beyond narrow tailoring.

He compared legislative elections to judicial elections. Judges decide cases, and it would look improper if they solicited or received campaign contributions from prospective litigants. Yet courts are in session all the time and judges are subject to elections, so fundraising must be done. The Code of Judicial Conduct handles the dilemma by saying that a judicial candidate should not personally solicit or accept campaign contributions, "but may establish committees of responsible persons to secure and manage the expenditure of such funds. Such committees are not prohibited from soliciting campaign contributions from anyone not otherwise prohibited by law from making such contributions or from soliciting public support from anyone."

Accordingly, Judge Manning said, "the Court believes that if the campaign committee, an independent registered body, is sufficient to satisfy the State's interest in protecting its courts from the appearance of corruption or impropriety, thus, the independent committees established by legislative candidates . . . should likewise provide a sufficient safeguard against the appearance of impropriety or corruption if allowed to function as fund raising organizations even while the General Assembly is in session."

So, Judge Manning severed the term "a political committee the purpose of which is to assist a member or members of or candidate for the Council of State or General Assembly " from the definition of "limited contributee" in G.S. 163-278.13B and held the rest of the statute constitutional as a matter of law.

Several questions arise. The judge said "independent committees *established by* legislative candidates" should be able to raise funds, so he did not seem to mean that the committees must be totally detached from the candidate. Not all legislative candidates, however, have established anything that could rise to the level of "independent committees." All candidates are required to file organizational statements with the Board of Elections and name a treasurer. But in many cases the candidate names him/herself as treasurer. Such an operation would seem not to be entitled to receive lobbyist contributions for a legislative candidate as a result of Judge Manning's order.

Any campaign-finance practice gains safety if approved by the Executive Secretary -Director of the State Board of Elections in a written ruling requested by the candidate or political committee. Such rulings are provided for in G.S. 163-278.23.

Thank you.

§ 163-278.13B. Limitation on fund-raising during legislative session.

St[redacted]ext

(a) Definitions. - For purposes of this section:

(1) "Limited contributor" means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(2) "Limited contributee" means a member of or candidate for the Council of State, a member of or candidate for the General Assembly, **or a political committee the purpose of which is to assist a member or members of or candidate or candidates for the Council of State or General Assembly.**

(3) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is "made" during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is "accepted" during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument during session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations. - While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly relay to the prohibited contributor the prohibited contributee's solicitation of a contribution.

(c) Prohibited Contributions. - While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee shall accept a contribution from a limited contributor.

(d) Exception. - The provisions of this section do not apply with regard to a limited contributee during the three weeks prior to the day of a second primary if that limited contributee is a candidate who will be on the ballot in that second primary.

(e) Prosecution. - A violation of this section is a Class 2 misdemeanor.

(1997-515, s. 9(b).)

Annotations

Editor's Note. - Session Laws 1997-515, s. 9(c) made this section effective January 1, 1998 and applicable to all contributions solicited, made, or accepted on or after that date. Subsections (d) and (e) were so designated at the direction of the Revisor of Statutes, the designations in Session Laws 1997-515, s. 9(b) having been (c1) and (d), respectively. Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

VISITOR REGISTRATION SHEET

House Finance — October 7, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Chief Robert Cansler	Concord Police Dept. President, NC Police Chiefs
Leona DeVivo	DENR
Andy Romanet	N.C.L.M.
Charles Wilkins	NCACP
Jerry Hadley	NCPC + Food Banks
Roz Sawyer	Lobbyist
Dave Updike	CPTL
Gene Tenore	Moore & Van Allen
Melissa Lovell	DOJ
Susan Nichols	DOJ
Neil A. Vanore	DOJ
Yvonne Southerland	State Board of Elections CRO
Denise A. Sessoms	DOJ

VISITOR REGISTRATION SHEET

Horse Pasture

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Eddie Caldwell	NC Sheriff's Assn / NC Law Enf Off. Assn
Leslie Bwacga	NCCBI
John Bowdish	Zeb Alley P.A.
Davie Simmons	11
Bernard Allen	SOS
Bob Carpenter	Senate
Mal Beason	Capital Group
Zeb Alley	Zeb PA
Evelyn Hawthorne	UNC-CH
Sen Horton	
Beaver	the Capital Group

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Crissy J. Parker	Bone & Associates
Chyanne Bone	" " "
David Ferrell	HMCC&C

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, SEPTEMBER 23, 1998

9:00 A.M. ROOM 544-LOB

The House Committee on Finance met on Wednesday, September 23, 1998, at 9:00 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

SB-1274 SUBMERGED LANDS/LEAD EXPOSURE

Rep. Weather explained this bill since he had the companion bill to the senate version. Rep. Cole asked how to determine the fair market value of submerged land. Ms. Martha Walston responded. Rep. Hensley asked how the lead exposure became part of this bill and Rep. Eddins was recognized to explain that he had included it with approval from Sen. Albertson. He further explained that portion of the bill. Rep. Arnold spoke on lead removal asked who is responsible for removals, owners, renters, etc. Mr. Ed Norman, Division of Environmental Health addressed members and explained. Rep. Arnold questioned Mr. Norman again and he replied. Rep. Arnold then questioned Rep. Eddins and he responded. Rep. Arnold spoke and shared concerns. Mr. Norman addressed his concerns. Rep. Arnold spoke a second time. Rep. Hensley asked Mr. Norman about the reduction of lead exposure and he answered. Rep. Brawley questioned the current program which monitors lead exposure in homes and Mr. Norman responded. Rep. Eddins spoke on the bill and moved for a favorable report. Rep. Arnold asked Rep. Brawley about chelation for testing of lead exposure. Rep. Brawley responded to his comments. Rep. Russell spoke on the chelation procedure. Mr. Norman responded.

The vote was taken and passed as moved.

The meeting adjourned at 9:28 a.m.

Rep. Gray, Chairman

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

WEDNESDAY, SEPTEMBER 23, 1998

9:00 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Gray

BILL FOR DISCUSSION:

SB-1274 Submerged Lands/Lead Exposure Amends

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1274*
House Committee Substitute Favorable 9/16/98

Short Title: Submerged Lands/Lead Exposure Amends. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE TIME FOR THE RESOLUTION OF CLAIMS TO LAND UNDER NAVIGABLE WATERS AND TO AMEND THE CURRENT LAW REGARDING THE CONTROL OF CHILDHOOD LEAD EXPOSURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-206 reads as rewritten:

"**§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.**

(a) The Secretary must commence to prepare as expeditiously as possible charts of the waters of North Carolina containing the locations of all oyster and clam leaseholds made by the Department under the provisions of this Article and of all existing leaseholds as they are renewed under the provisions of this Article, the locations of all claims of grant of title to portions of the bed under navigable waters registered with him, and the locations of all areas in navigable waters to which a right of private fishery is claimed and registered with him. Charting or registering any claim by the Secretary in no way implies recognition by the State of the validity of the claim.

(a1) If a claim is based on an oyster or other shellfish grantor a perpetual franchise for shellfish cultivation, the Secretary may, to resolve the claim, grant a shellfish lease to the claimant for part or all of the area claimed. If a claim of exclusive shellfishing rights was registered based upon a conveyance by the Literary Fund, the North Carolina Literary Board or the State Board of Education, and the claimant shows that the area had been cultivated by the claimant or his predecessor

in title for the seven-year period prior to registration of the claim, the Secretary may, to resolve the claim, grant a shellfish lease to the claimant for all or part of the area claimed, not to exceed ten acres. A shellfish lease granted under this subsection is subject to the restrictions imposed on shellfish leases in G.S. 113-202, except the prohibition against leasing an area that contains a natural shellfish bed in G.S. 113-202(a)(2). This restriction is waived because, due to the cultivation efforts of the claimant, the area is likely to contain a natural shellfish bed.

(b) In the event of any overlapping of areas leased by the Department, the Secretary shall recommend modification of the areas leased as he deems equitable to all parties. Appeal from the recommendation of the Secretary lies for either party in the same manner as for a lease applicant as to which there is a recommendation of denial or modification of lease. If there is no appeal, or upon settlement of the issue upon appeal, the modified leases must be approved by the Marine Fisheries Commission and reissued by the Secretary in the same manner as initial or renewal leases. Leaseholders must furnish the Secretary surveys of the modified leasehold areas, meeting the requisite criteria for surveys established by the Secretary.

(c) In the event of any overlapping of areas leased by the Department and of areas in which title or conflicting private right of fishery is claimed and registered under the provisions of this Article, the Secretary must give preference to the leaseholder engaged in the production of oysters or clams in commercial quantities who received the lease with no notice of the existence of any claimed grant or right of fishery. To this end, the Secretary shall cause a modification of the claim registered with him and its accompanying survey to exclude the leasehold area. Such modification effected by the Secretary has the effect of voiding the grant of title or right of fishing to the extent indicated.

(d) In the interest of conservation of the marine and estuarine resources of North Carolina, the Department may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Secretary. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the trier of fact shall fix the monetary worth of the claim. The Department may elect to condemn the claim upon payment of the established owners or right holders their pro rata shares of the amount so fixed. The Department may make such payments from such funds as may be available to it. An appeal lies to the appellate division by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Department in such actions may be represented by the Attorney General. In determining the availability of funds to the Department to underwrite the costs of litigation or make condemnation payments, the use which the Department proposes to make of the area in question may be considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner.

(e) A person who claims that the application of G.S. 113-205 or this section has deprived him of his private property rights in land under navigable waters or his right

of fishery in navigable waters without just compensation may file a complaint in the superior court of the county in which the property is located to contest the application of G.S. 113-205 or this section. If the plaintiff prevails, the trier of fact shall fix the monetary worth of the claim, and the Department may condemn the claim upon payment of this amount to him if the Secretary considers condemnation appropriate and necessary to conserve the marine and estuarine resources of the State. The Department may pay for a condemned claim from available funds. An action under this subsection is considered a condemnation action and is therefore subject to G.S. 7A-248.

The limitation period for an action brought under this subsection is three years. This period is tolled during the disability of the plaintiff. No action, however, may be instituted under this subsection after ~~December 31, 2001.~~ 31 December 2006.

(f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall favor public ownership of submerged lands and public trust rights. The Secretary's action does not alter or affect in any way the rights of a claimant or the State.

To facilitate resolution of claims registered pursuant to G.S. 113-205, the Secretary, in cooperation with the Secretary of Administration and the Attorney General, shall establish a plan to resolve these claims by ~~December 31, 1998.~~ 31 December 2003. The Secretary shall notify the Secretary of Administration and the Attorney General of the resolution of each claim. In addition, on or before October 1 of each year, the Secretary shall submit a report to the Joint Legislative Commission on Governmental Operations stating the following:

(1) The number of claims registered pursuant to G.S. 113-205 that were resolved during the preceding year;
(2) The cost of resolving these claims;
(3) The number of unresolved claims; and
(4) Payments made to acquire claims by condemnation."

Section 2. G.S. 105-151.12(e) reads as rewritten:

"(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before ~~December 31, 1998,~~ 31 December 2003 to qualify for the credit allowed by this section."

Section 3. G.S. 130A-131.5 reads as rewritten:

"**§ 130A-131.5. Commission to adopt rules.**

(a) For the protection of the public health, the Commission shall adopt rules for the prevention and control of lead poisoning in children in accordance with this Part. ~~children. The rules shall include provisions for:~~

~~(1) Reporting by laboratories of elevated blood lead levels in children less than six years of age; the rules shall specify the public health agency to which reports shall be made, and shall establish when a blood lead level is considered to be elevated. The rules shall further provide the specific information to be included in the reports, the time limits for reporting, and the form in which reports shall be submitted;~~

~~(2) Investigation by the Department to determine the source of elevated blood lead levels;~~
~~(3) Identification of lead poisoning hazards;~~
~~(4) Examination and testing of children less than six years of age who are reasonably suspected of having elevated blood lead levels; and~~
~~(5) Abatement of lead poisoning hazards in dwellings, schools and child care centers determined by the Department to be a potential source of an elevated blood lead level in a child less than six years of age.~~

~~(b) Abatement orders issued by the Department pursuant to this section shall require elimination of the lead poisoning hazard. Removal of children from the dwelling, school, or child care center shall not constitute abatement if the property continues to be used for a dwelling, school, or child care center.~~"

Section 4. G.S. 130A-131.7(1) reads as rewritten:

"(1) 'Abatement' means ~~identifying lead-based paint, identifying or assessing a lead-based paint hazard, or~~ undertaking any of the following measures to eliminate a lead-based paint hazard:

a. Removing lead-based paint from a surface and repainting the surface.
b. Removing a component, such as a windowsill, painted with lead-based paint and replacing the component.
c. Enclosing a surface painted with lead-based paint with paneling, vinyl siding, or another approved material.
d. Encapsulating a surface painted with lead-based paint with a sealant.
e. Any other measure approved by the Commission.

~~The term includes an inspection and a risk assessment.~~"

Section 5. G.S. 130A-131.9C(j) reads as rewritten:

"(j) The Department shall verify by visual inspection that the approved remediation plan has been completed. The Department may also verify plan completion by residual lead dust monitoring and soil or drinking water lead level measurement.

(j1) Compliance with the maintenance standard ~~shall be deemed equivalent to meeting~~ satisfies the remediation ~~plan requirements as long as exterior surfaces are also addressed.~~ requirements for confirmed lead poisoning cases identified on or after 1 October 1990 as long as all lead poisoning hazards identified on interior and exterior surfaces are addressed by remediation. Except for owner-occupied residential housing units, continued compliance shall be verified by means of an annual monitoring inspection conducted by the Department. For owner-occupied residential housing units, continued compliance shall be verified (i) by means of an annual monitoring inspection, (ii) by documentation that no child less than six years of age has resided in or regularly visited the residential housing unit within the past year, or (iii) by documentation that no child less than six years of age residing in or regularly visiting the unit has an elevated blood lead level."

Section 6. G.S. 130A-131.9D reads as rewritten:

"**§ 130A-131.9D. Effect of compliance with maintenance standard.**

Any owner of a residential housing unit constructed prior to 1978 who is sued by a current or former occupant seeking damages for injuries allegedly arising from exposure to lead-based paint or lead-contaminated dust, shall not be deemed liable (i) for any injuries sustained by that occupant after the owner first complied with the maintenance standard defined under G.S. ~~130A-131.7(10)~~ 130A-131.7 provided the owner has repeated the steps provided for in the maintenance standard annually for units in which children of less than six years of age have resided or regularly visited within the past year and obtained a certificate of compliance under G.S. 130A-131.9E annually during such occupancy; or (ii) if the owner is able to show by other documentation that compliance with the maintenance standard has been maintained during the period when the injuries were sustained; or (iii) if the owner is able to show that the unit was lead-safe housing containing no lead-based paint hazards during the period when the injuries were sustained."

Section 7. Part 4 of Article 5 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-131.9H. Application fees for certificates of compliance.**

The Department shall collect an application fee of ten dollars ($10.00) for each certificate of compliance. Fee receipts shall be used to support the program that is developed to implement this Part. Fee receipts also may be used to provide for relocation and medical expenses incurred by children with confirmed lead poisoning."

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

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1274 (Second Edition) DRAFT

SHORT TITLE: Submerged Lands/Lead Exposure Amendments

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Submerged Land Credits	0	($100,000)	($100,000)	($100,000)	($100,000)
Departmental receipts from certificates of compliance with lead maintenance standard	$2,300	$4,100	$5,900	$7,700	$9,500
EXPENDITURES					
Travel related to annual lead hazard monitoring inspections	$2,243	$3,998	$5,753	$7,508	$9,263

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Division of Environmental Health; Marine Fisheries, Local Health Departments.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The second edition of Senate Bill 1274 combines the provisions of the first edition of Senate Bill 1274 (Extend Submerged Lands Claims) and the provisions of the second edition of House Bill 1438 (Childhood Lead Exposure Amendments).

Section 1 extends two deadlines related to submerged land claims. First, the bill extends until December 31, 2006, the time allowed to file a submerged land claim. Under current law that period closes on December 31, 2001. As such, the bill gives the potential plaintiff five more years to take action. Second, the bill gives the Department of Environment and Natural Resources until December 31, 2003, to establish a plan to resolve submerged land claims. Under current law, the Department's time expires on December 31, 1998.

Section 2 extends the date by which claimed marshlands must be donated to qualify for a tax credit under G.S. 105-151,12 from December 31, 1998, to December 31, 2003.

Section 3 deletes the specific provisions for what the lead poisoning prevention and control rules adopted by the Commission for Health Services (Commission) should include. Section 3 also

deletes the provision stating that abatement orders must require elimination of the lead poisoning hazard and that removal of children from a dwelling, school, or child care center shall not constitute abatement if the property continues to be used for a dwelling, school, or child care center.

Section 4 deletes the following activities from the definition of "abatement": the identification of lead-based paint, the identification or assessment of a lead-based paint hazard, inspection, and risk assessment.

Section 5 provides that compliance with the maintenance standard satisfies remediation requirements for confirmed lead poisoning cases identified on or after October 1, 1990, as long as all lead poisoning hazards identified on interior and exterior surfaces are addressed by remediation.

Continued compliance for owner-occupied residential housing units may be verified by:

- Means of an annual monitoring inspection
- Documentation that no child less than 6 years of age has resided in or regularly visited the unit within the past year
- Documentation that no child less than 6 years of age residing in or regularly visiting the unit has an elevated blood lead level

For all other properties, the Department of Environment and Natural Resources (DENR or the Department) will conduct an annual monitoring inspection to verify continued compliance.

For compliance purposes, "maintenance standard" means:

- Using safe work practices, repairing and repainting areas of deteriorated paint inside a residential housing unit and for single-family and duplex residential dwelling built prior to 1950, repairing and repainting areas of deteriorated paint on interior and exterior surfaces
- Cleaning the interior of the unit to remove dust that constitutes a lead poisoning hazard
- Adjusting doors and windows to minimize friction or impact on surfaces
- Subject to the occupant's approval, appropriately cleaning any carpets
- Taking such steps as are necessary to ensure that all interior surfaces on which dust might collect are readily cleanable
- Providing the occupant or occupants with all information required to be provided under federal law related to lead-based paint hazard reduction

Section 6 modifies the lead exposure liability statute so that any owner of a residential housing unit constructed prior to 1978 will not be deemed liable for injuries sustained by an occupant after the owner first complied with the maintenance standard, provided that the owner has repeated the maintenance annually for units in which children younger than 6 years of age have resided in or regularly visited within the past year.

Section 7 directs DENR to establish and collect a ten dollar ($10.00) application fee for each housing unit, for certificates of compliance. These fees are to be used to support the lead poisoning in children program and may be used to provide for relocation and medical expenses incurred by children with confirmed lead poisoning.

Section 8 makes this act effective when it becomes law.[1]

ASSUMPTIONS AND METHODOLOGY:

SECTIONS 1 - 2: SUBMERGED LANDS CLAIMS:

The only change in this area that may have a fiscal impact is the extension of time to claim a tax credit. Under G.S. 105-151.12(e), a person who makes a "qualified" donation of claimed marshland can take an income tax credit of up to 25% of the fair market value of the land. The credit can not exceed $100,000. Any unused portion of the credit may be carried forward for five years. To "qualify" a donation must be accepted by the state. The tax credit for the marshland donations portion of G.S. 105-151.12(e) sunsets on December 31, 1998. Under current law, the claim to marshland must be made by that date to be eligible for a tax credit, if the land is donated. The bill extends this portion of G.S. 105-151.12(e) to December 31, 2003.

In calendar year 1996 (the most recent year for which data is available) only one organization took advantage of the submerged lands credit. That donation was of 1,143.5 acres. The donor estimated the value of the property at $205,000. Under current law that donation would create a $51,250.00 tax credit. (However, because the credit cap for this program was at $25,000 in 1996, the total liability associated with this claim was $25,000). Officials from Marine Fisheries have processed claims for approximately 11,000 acres since 1985. They processed less than one claim per year under the program. State officials are only aware on one project that is "in the pipeline" at this time, but more are possible. They do not believe last session's action to increase the credit cap has had a significant impact on this portion of the conservation program.

Assuming one claim is filed per year, and the maximum tax credit applies, the loss is $100,000 per year.

The Department currently absorbs the cost of the program out of existing resources, and expects to be able to continue the program without additional appropriations.

SECTIONS 3 - 7: CHILDHOOD LEAD EXPOSURE:

Under current law, if a residential housing unit is identified as containing a lead hazard, the owner of that unit must comply with one of two remediation requirements: 1) lead hazard abatement, which requires the elimination of the lead hazard, or 2) compliance with the maintenance standard, which requires that the deteriorated areas be repaired, repainted and maintained. Compliance with the maintenance standard also requires an annual on-site monitoring inspection by a certified lead inspector or risk assessor so long as children less than 6 years old reside in or regularly visit the unit.

This bill amends the current law by providing owners of owner-occupied residential housing units with two additional methods of verifying compliance with the maintenance standard. In

[1] Memo to House Committee on Environment dated September 16, 1998 from Jeff Hudson, Committee Counsel.

lieu of an annual monitoring inspection, compliance with the maintenance standard can be verified by either of the following:

1) documentation than no child less than six years of age has resided in or regularly visited the residential housing unit within the past year, or
2) documentation that no child less than six years of age residing in or regularly visiting the unit has an elevated blood lead level.

For non-owner-occupied residential housing units (i.e., rental units) compliance with the maintenance standard can only be verified by means of an annual monitoring inspection.

This bill also extends the maintenance standard option as an acceptable means of remediation to residential housing units identified as containing a lead hazard on or after October 1, 1990. The bill also directs the Department to collect an application fee of $10 for each certificate of compliance issued.

REVENUES:

The amount of revenue generated from the $10 application fee is based on the number of housing units which choose to comply with the maintenance standard in lieu of abatement. Because the maintenance standard is not a permanent method of removing the lead hazard, the maintenance standard follows the unit indefinitely or until the unit is abated. Consequently, the number of units requiring annual reinspections is cumulative and the number of reinspections conducted by the Department will accumulate indefinitely.

"Old" Units: Of the units identified prior to October 1, 1997, the Department estimates that only 50 units statewide are still outstanding and that all of these outstanding cases will choose to comply with the maintenance standard. In addition to outstanding cases, the Department estimates that approximately 200 units identified since October 1, 1990 have been abandoned. Because these owners have chosen to abandon their unit rather than assume the cost of abatement, this note assumes that none of these owners will choose the maintenance standard due to a number of factors: 1) the owners are not willing to invest the money necessary to bring the unit into compliance with the maintenance standard, 2) the unit may be so dilapidated that it could never be made to comply with the maintenance standard, or 3) the owners of the abandoned units may be unaware of the new maintenance standard option.

"New" Units: Of the approximately 200 new cases identified annually, the Department estimates that 90 percent (or 180 units) will choose to comply with the maintenance standard and pay the $10 application fee annually rather than comply with the more expensive option of lead hazard abatement. Based on the availability of federal funds for lead hazard abatement and number of owners who have qualified for these funds in the past, the Department estimates the remaining 10 percent (or 20 units) will choose to abate.

Owner-Occupied vs. Non-Owner Occupied Units: Of the 200 units identified annually, the Department estimates that 10 percent are owner-occupied and 90 percent are non-owner occupied units (rental units). This distinction is important because annual monitoring is required

indefinitely for owners of rental units who choose to comply with the maintenance standard. Whereas, owner-occupied units can verify compliance through either of the additional two methods proposed, neither of which require the owner to pay the $10 application fee. Thus, at a minimum, 162 units (all non-owner occupied) would require an annual monitoring inspection. If all of the owner-occupied units choose to verify compliance through an inspection, then the number of units requiring an annual inspection would rise to 180.

Units Identified Annually by Type	Maintenance Standard Option	Abatement Option	Total Units
Owner-Occupied	18	2	20
Non-Owner Occupied	162	18	180
Total	180	20	200

Although the Department anticipates that many of the owner-occupied units will be able to verify compliance through a method other than an annual monitoring inspection, an accurate estimate of this number can not be determined at this time. Thus, the fiscal impact presented below is based on a maximum number of units verifying compliance with the maintenance standard through annual reinspections and represents the upper limit on the amount of revenue to be generated from the $10 application fee. This fee will be collected for the initial inspection and each year the annual monitoring inspection is conducted.

FY 1998 - 99	50 outstanding cases	X	$10 application fee =	$ 500
	180 new inspections	X	$10 application fee =	$ 1,800
	230 total inspections			$ 2,300
FY 1999 - 00	230 reinspections	X	$10 application fee =	$ 2,300
	180 new inspections	X	$10 application fee =	$ 1,800
	410 total inspections			$ 4,100
FY 2000 - 01	410 reinspections	X	$10 application fee =	$ 4,100
	180 new inspections	X	$10 application fee =	$ 1,800
	590 total inspections			$ 5,900
FY 2001 - 02	590 reinspections	X	$10 application fee =	$ 5,900
	180 new inspections	X	$10 application fee =	$ 1,800
	770 total inspections			$7,700
FY 2002 - 03	770 reinspections	X	$10 application fee =	$ 7,700
	180 new inspections	X	$10 application fee =	$ 1,800
	950 total inspections			$ 9,500

EXPENDITURES:

According to the Department, no new positions are necessary to conduct the annual monitoring inspections required of the maintenance standard; however, these reinspections will impact the costs of the childhood lead prevention programs of the local health departments. Local environmental health specialists, who have been trained and certified as lead inspectors or risk assessors, will be responsible for conducting the annual reinspections. Each reinspection will take approximately 4 hours to complete including travel and related paperwork. The Department estimates each monitoring inspection will require a 30 mile round-trip at $0.325 per mile. The Department estimates that the local health departments' costs of conducting these annual reinspections is an opportunity cost of environmental health specialists not being able to complete other inspections, such as food and lodging inspections. Thus, mileage is the only net expenditure associated with the annual monitoring inspection.

FY 1998 - 99	230 cases	X	(30 miles round-trip	X	$0.325/per mile)	=	$ 2,243
FY 1999 - 00	410 cases	X	(30 miles round-trip	X	$0.325/per mile)	=	$ 3,998
FY 2000 - 01	590 cases	X	(30 miles round-trip	X	$0.325/per mile)	=	$ 5,753
FY 2001- 02	770 cases	X	(30 miles round-trip	X	$0.325/per mile)	=	$ 7,508
FY 2002 - 03	950 cases	X	(30 miles round-trip	X	$0.325/per mile)	=	$ 9,263

In addition to directing the Department to use receipts collected from the application fee to support program expenditures, this bill also allows the Department to use some of these receipts to pay for relocation and medical expenses of children with confirmed lead poisoning. Based on conversations with Ed Norman, Program Supervisor of the Children's Environmental Health Branch, the Department would like to use a portion of the receipts collected to develop a fund to support families in need of financial assistance with medical or relocation expenses. The need for this type of financial assistance is based on past requests made to local health departments and the experience of Maryland which has a childhood lead prevention program similar to North Carolina.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Jennifer Hoffmann and Linda Millsaps
APPROVED BY:
DATE: September 22, 1998

North Carolina General Assembly
Legislative Services Office

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Memorandum

September 23, 1998

TO: House Committee on Finance

FROM: Jeff Hudson, Committee Counsel; House Committee on Environment

SUBJECT: Senate Bill 1274, 2nd Edition (Submerged Lands/Lead Exposure Amendments)

Senate Bill 1274 (Extend Submerged Lands Claims) was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission and introduced by Senator Charles Albertson in the Senate. This bill was requested by the Department of Environment and Natural Resources (DENR) in order to provide more time for DENR, in conjunction with the Attorney General's Office, to review and resolve outstanding submerged lands claims. The companion to Senate Bill 1274, House Bill 1490 (Extend Submerged Lands Claims), was introduced in the House of Representatives by Representative John Weatherly.

House Bill 1438 (Childhood Lead Exposure Amendments) was recommended to the 1998 Regular Session of the 1997 General Assembly by the Environmental Review Commission and was introduced by Representative Rick Eddins in the House of Representatives. The companion bill to House Bill 1438, Senate Bill 1305 (Childhood Lead Exposure Amendments), was introduced in the Senate by Senator Fountain Odom.

Senate Bill 1274, 2nd Edition contains the provisions of Senate Bill 1274 (Extend Submerged Lands Claims) as introduced and the provisions of House Bill 1438, 2nd Edition (Childhood Lead Exposure Amendments).

Senate Bill 1274, 2nd Edition

Section 1 extends the date by which a submerged lands claim must be instituted from December 31, 2001 to December 31, 2006. This section also extends the date by which the Secretary of Environment and Natural Resources must establish a plan to resolve submerged lands claims from December 31, 1998 to December 31, 2003.

Section 2 extends the date by which marshland claimed under the submerged lands claims statutes must be donated in order to qualify for a tax credit under G.S. 105-151.12 (credit for certain real property donations) from December 31, 1998 to December 31, 2003.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 3 deletes the specific provisions for what the lead poisoning prevention and control rules adopted by the Commission for Health Services (Commission) should include. Section 1 also deletes the provision stating that abatement orders must require elimination of the lead poisoning hazard and that removal of children from a dwelling, school, or child care center shall not constitute abatement if the property continues to be used for a dwelling, school, or child care center.

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- Adjusting doors and windows to minimize friction or impact on surfaces
- Subject to the occupant's approval, appropriately cleaning any carpets
- Taking such steps as are necessary to ensure that all interior surfaces on which dust might collect are readily cleanable
- Providing the occupant or occupants with all information required to be provided under federal law related to lead-based paint hazard reduction

Section 6 modifies the lead exposure liability statute so that any owner of a residential housing unit constructed prior to 1978 will not be deemed liable for injuries sustained by an occupant after the owner first complied with the maintenance standard, provided that the owner has repeated the maintenance annually for units in which children younger than 6 years of age have resided in or regularly visited within the past year.

Section 7 directs DENR to establish and collect an application fee, not to exceed ten dollars ($10.00) for each housing unit, for certificates of compliance. These fees are to be used to support the lead poisoning in children program and may be used to provide for relocation and medical expenses incurred by children with confirmed lead poisoning.

Section 8 makes this act effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

House ☒ Committee Substitute for

S.B. 1274 A BILL TO BE ENTITLED AN ACT TO EXTEND THE TIME FOR THE RESOLUTION OF CLAIMS TO LAND UNDER NAVIGABLE WATERS AND TO AMEND THE CURRENT LAW REGARDING THE CONTROL OF CHILDHOOD LEAD EXPOSURE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

Horse Pasture — 9-23-98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ed Norman	DENR
Mark Beason	Capital Group
Ryke Longest	N.C. DOS
Alicia Gregory	Poyner & Spruill
R. Lovkis	DENR
Mark Cunningham	NCDOT
[illegible]	NCPC + Food Banks
Martha Glass	DOA
John Phelps	NCLM
David Smith	ZOA/DOA
Jean Dunn	WCSR
Sam Taylor	WCSR

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bill Flournoy	DENR
Betsy Justus	BRC
Michelle Cotton	DMH/DD/SAS

MINUTES

COMMITTEE ON FINANCE

WEDNESDAY, SEPTEMBER 2, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Wednesday, September 2, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Chairman Gray called the meeting to order.

HB-1347 PROHIBIT INTERNET TAXATION

Rep. Shubert explained the bill. Rep. Hightower spoke. Rep. Rayfield moved for a favorable report.

Rep. Goodwin sent forth an amendment, explained and urged adoption. Rep. Hackney asked if this was constitutional. Rep. Goodwin responded. Rep. Cunningham was concerned about the April 15th date. Rep. Goodwin responded to his concerns. Rep. Hill questioned the amendment sponsor and he answered. Rep. Dickson asked about jurisdiction from other states sending e-mails in to North Carolina. He asked that Rep. Reynolds be allowed to address our committee. Rep. Reynolds spoke and advised he would support the amendment. Rep. Dedmon asked if this will help with computer viruses. Rep. Goodwin answered. Rep. Eddins asked how to enforce this. Rep. Goodwin explained. Rep. Rayfield commented on computer junk mail and regular mail junk mail and how to classify the difference. Rep. Goodwin addressed his remarks. Rep. Hackney asked about other states. Mr. Gerry Cohen, Bill Drafting Division, responded. Rep. Russell also spoke about junk mail. Rep. Goodwin spoke again.

The vote was taken on the amendment and it was adopted.

Rep. Cunningham spoke on the bill and questioned the long title of the bill. Rep. Shubert and Mr. Cohen replied. Rep. Cunningham was still concerned about the effective date. Mr. Cohen explained this date. Rep. Hackney had additional questions which Mr. Cohen addressed. Rep. Hackney then spoke again.

The vote was taken and given a favorable report, unfavorable to the original bill.

SB-1199 SET REGUL FEES/INCREASE VARIOUS FEES

Rep. Howard sent forth a committee substitute to be adopted for discussion. So moved. Sen. Kerr explained the legislation. Rep. Howard requested that staff explain Sec. 4. Ms. Cindy Avrette, Research Division explained. Rep. Howard made additional comments. Sen. Kerr responded to her comments.

Rep. Wilson moved for a favorable report, unfavorable to the original bill.

Rep. Hensley spoke and advised he would not support this because of the increase in court fees. Sen. Kerr spoke on the fiscal impact of the court fees. Rep. Wilson requested staff to give the history and the fiscal impact. Ms. Avrette and Mr. Charles Perusse, Fiscal Research Division explained. Rep. Cunningham questioned Rep. Howard and she addressed his concerns. Rep. Hackney shared additional comments and concerns to Rep. Howard. Rep. Russell questioned the court fee increase. Rep. Howard responded and requested that a representative from the County Commissioners Association address this issue. Ms. Patrice Rothsler, County Commissioners Association spoke to the members. Rep. Russell had an additional question for her which she answered.

Rep. Baddour sent forth an amendment. Chairman Gray read it. Rep. Baddour spoke on his amendment and urged adoption. Rep. Howard opposed the amendment. She continued with comments to Rep. Hackney's previous comments. Rep. Buchanan spoke on the amendment. Rep. Cunningham spoke on the amendment. Rep. Hightower supports the amendment. Rep. Brawley urged defeat of the amendment. Rep. Hensley spoke on the amendment. Rep. Baddour called the question. So moved. Rep. Howard requested the ayes and noes on the amendment vote.

The roll call vote was taken and the amendment failed, 11-22.

The vote was taken and the bill was given a favorable report, unfavorable to the original bill.

The meeting adjourned at 9:55 a.m.

Rep. Gray, Chairman

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

WEDNESDAY, SEPTEMBER 2, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

BILLS FOR DISCUSSION:

HB-1347	Prohibit Internet Taxation	Rep. Shubert
SB-1199	Set Regul Fees/Increase Various Fees	Sen. Kerr

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1347

Short Title: Prohibit Internet Taxation. (Public)

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

Referred to: Commerce, if favorable, Finance.

May 20, 1998

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

Section 1. It is the intent of the General Assembly that no new taxes shall be authorized on Internet access charges, the Internet, or Internet commerce.

Section 2. The Department of Revenue shall enforce the sales and use tax laws with respect to Internet commerce only to the same extent it enforces the sales and use tax laws with respect to mail-order commerce.

Section 3. This act is effective when it becomes law and applies to transactions occurring on or after April 15, 1998.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: HB 1347
SHORT TITLE: Prohibit Internet Taxation
SPONSOR(S): Rep. Shubert and Brawley

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

EFFECTIVE DATE: Transactions occurring on or after April 15, 1998.

BILL SUMMARY: States the intent of the General Assembly that no new taxes be authorized on Internet access charges, the Internet, or Internet commerce. The bill also states legislative intent to the Department of Revenue to enforce sales and use tax laws on interstate commerce only to the same extent it enforces the sales and use tax laws with respect to mail order commerce.

ASSUMPTIONS AND METHODOLOGY: The bill expresses legislative intent and thus has no direct fiscal impact. The 1988 General Assembly did enact legislation attempting to tax mail order sales but the Department of Revenue has been unable to aggressively enforce the tax due to the Quill decision of the U.S. Supreme Court. A few years ago the Department did enter into an agreement with other Southeastern states to swap sales tax information within each state so that states had the opportunity to try to collect the use tax on mail order sales.

In addition, at this time the Department of Revenue has no plans to aggressively pursue the taxation of the transactions identified in the bill language.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: September 2, 1998.

EXPLANATION OF HOUSE BILL 1347:
Prohibit Internet Taxation

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: September 1, 1998
SPONSOR: Representative Shubert

House Bill 1347 is a recommendation of the Legislative Research Commission Business Development Committee and was given a favorable report in House Commerce. The Bill provides that it is the intent of the General Assembly not to tax Internet access charges, the Internet, or Internet commerce. The bill further directs the Department of Revenue to enforce the sales and use tax laws with respect to Internet commerce only to the extent it enforces the sales and use tax laws with respect to mail-order commerce. The act is effective when it becomes law and applies to transactions occurring on or after April 15, 1998.

Under current law, North Carolina does not tax Internet access charges. The following states impose sales taxes on Internet access:

STATE	RATE	
	State	Local
Connecticut	6%	
District of Columbia	City 5.75%	
Iowa	5%	Up to 1%
New Mexico	5%	Up to 1.25%
North Dakota	5%	Up to 1%
Ohio	5%	Up to 2%
South Carolina	5%	Up to 1%
South Dakota	4%	Up to 2%
Tennessee	6%	Up to 2.75%
Texas	6.25%	Up to 2%
Wisconsin	5%	Up to 1%

Since 1996, California, Florida, Georgia, and Massachusetts have passed legislation exempting Internet access charges from sales tax. The proposed federal Internet Tax Freedom Act would prohibit state and local governments from imposing new taxes on the Internet for three years. Taxes prohibited by the federal bill include sales taxes on Internet access charges, taxes on online services, transmission of data over the Internet or taxes on the capability to transmit data over the Internet. The federal bill has passed the House of Representatives but is still pending in the Senate.

Under current law, the Department of Revenue is enforcing the sales and use tax laws with respect to Internet commerce if the retailer has a sufficient nexus with North Carolina. This is the same way the sales and use tax is enforced with respect to mail-order commerce. G.S. 105-164.3(8) defines "mail order sale" as "a sale of tangible personal property, ordered by mail, telephone, computer link, or other similar method, to a purchaser who is in this State at the time the order is remitted from a retailer who receives the order in another state and transports the property or causes the property to be transported to a person in this State." This definition appears to be broad enough to include Internet commerce. In addition, under G.S. 105-164.8(b), a mail order retailer will be subject to the sales and use tax if the retailer is found to have a sufficient nexus with the State such as maintaining an office in the State, retaining representatives who solicit business in the State, or being domiciled in the State. A nexus is also found when the retailer purposefully or systematically exploits the market provided by N.C. by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogs, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media.

Civil Justice ■ Commerce and Economic Development ■ Criminal Justice ■ Education ■ Energy, Environment, Natural Resources and Agriculture ■ Health and Human Services ■ Tax and Fiscal Policy ■ Telecommunications and Information Technology ■ Trade and Transportation

Task Force Update

ALEC Nexus Hearing a Success

Model Legislation Planned to Protect Internet Commerce and Remote Sellers and Limit Ability of States to Tax Out-of-State Businesses

by Michael Flynn

ALEC's Nexus/Electronic Commerce Subcommittee met June 17-19 in Washington, D.C. to hear testimony on a wide range of views related to Internet commerce and remote selling. The hearing was organized by ALEC's Tax and Fiscal Policy Task Force. Items discussed included: Internet taxes; electronic commerce; multi-state taxation; nexus standards; and, "doing business" requirements.

"This hearing was the first step in ALEC's comprehensive project to examine all aspects of multi-state taxation," explained subcommittee chair Colorado State Representative Bob Hagedorn. "We're concerned by the aggressive stance taken by many revenue departments in trying to impose taxes on out of state businesses and non-residents. Many of these actions do not reflect the intent of the legislature."

Hagedorn explained that ALEC's project was driven, in large measure, by the Internet tax bills under consideration in Congress. The legislation would establish a moratorium or "cooling off" period before any taxes could be imposed on the Internet. Although ALEC has not adopted formal policy on the federal bills, it has called for states to enact their own moratoriums.

The federal cooling off period would allow the establishment of an advisory commission to study issues related to Internet commerce taxation. This commission could recommend to Congress a system to allow the taxation of the Internet and all remote sellers. "There is concern among our members that any system which is set up to tax Internet commerce could have profound effects on other businesses and our economy," Hagedorn said.

Hagedorn singled out a proposal that would overturn the "physical presence" nexus standard as one of particular concern to ALEC. "Nexus" is the point at which a business's activities in a state trigger tax liability or tax collection obligation. The Supreme Court has ruled that a company must have "physical presence" in a state before nexus is met. "Any change in the "physical presence" standard would cripple the ability of small businesses to participate in the new information economy."

The Nexus Hearing brought together key legislative members of the Tax & Fiscal Policy Task Force's Nexus/Electronic Commerce Subcommittee. The committee will use the information gained from the hearing to develop model legislation to construct a fair and sensible tax policy for the Internet, electronic commerce and multi-state businesses. Later this summer the subcommittee will publish an *Issue Analysis* based on its findings.

"The quality of the presenters was exceptional," said State Representative Howard Fargo, Pennsylvania House Majority Caucus Chair and Chair of ALEC's Tax and Fiscal Policy Task Force. "The members gained key insights that will be used as we draft legislation." Fargo said he expected the full Task Force to discuss the legislation at ALEC's Annual Meeting in August in Chicago and at the fall Task Force Meeting in New Orleans.

Among those testifying were: U.S. Senator Ron Wyden (D-Ore.), co-author of the *Internet Tax Freedom Act*; Donald W. Upson, Virginia's recently appointed Secretary of Technology; Val Oveson, Chairman of the Utah State Tax Commission; Dr. Richard Vedder, Professor at Ohio University and Advisor to the Task Force; Mark Rhoads of the U.S. Internet Council; and Mark Micali of the Direct Marketing Association. Altogether, the subcommittee heard testimony from over 20 panelists, representing industry, government and academe. ■

Flynn is Director of ALEC's Tax and Fiscal Policy Task Force, and can be reached at (202) 466-3800 or www.mflynn.ALEC.org

ALEC Task Force Calendar

Below are the Task Force Meetings and special policy events at the 1998 Annual Meeting in Chicago. Please see the Annual Meeting Preview (pgs. 22-23) or contact the listed Task Force for more information.

ARMEY

TAUZIN

- **Armey-Tauzin "*Scrap the Code*" Debate**
  Tuesday, August 18, 5:00-6:00 p.m
- **Task Force Reception**
  Wednesday, August 19, 9:30-11:00 p.m.
- **Task Forces Meetings**
  Thursday, August 20, 2:30-5:30 p.m.
  Civil Justice Task Force
  Commerce and Economic Development
  Education Task Force
  Health and Human Services Task Force
  Tax and Fiscal Policy Task Force Meeting
- **Task Forces Meetings**
  Friday, August 20, 2:30-5:30 p.m.
  Criminal Justice Task Force
  Energy, Environment, Natural Resources and Agriculture
  Telecommunications and Information Technology Task Force
  Trade and Transportation Task Force

Goodwin

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1347

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1347-ALB-1

Date_____,1998

Comm. Sub. []
Amends Title [YES]

moves to amend the bill on page 1, line 6
by inserting the following immediately before the period:
", AND TO IMPOSE LIABILITY ON THOSE WHO TRANSMIT UNSOLICITED ITEMS OF ELECTRONIC MAIL THAT INCLUDE ADVERTISEMENTS (SPAM)"

further moves to amend the bill on page 1, lines 13 and 14 by rewriting those lines to read:

Section 3. (a) There are a large number of computer systems in State government with Internet E-mail access, some of them serving agencies and State employees, and some of them serving students in The University of North Carolina System, community colleges, and public schools. SPAM requires more network resources, telephone line charges, online time, diversion of productive time of employees and students, and other needless expense in the State budget for fiscal year 1998-99, which can be reduced by eliminating SPAM.

(b) Subchapter XIV of Chapter 1 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 43E.

"Unsolicited Electronic Mail Advertisements.

"§ 1-539.25. Definitions.

As used in this Article, the following definitions apply:

(1) "Advertisement" means material that:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1347

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1347-ALB-1

a. Advertises for commercial purposes the availability or the quality of real property, goods, or services; or
b. Is otherwise designed or intended to solicit a person to purchase real property, goods, or services.

(2) "Electronic mail" means a message, a file or other information that is transmitted through a local, regional, or global network, regardless of whether the message, file or other information is:
a. Viewed;
b. Stored for retrieval at a later time;
c. Printed onto paper or other similar material; or
d. Filtered or screened by a computer program that is designed or intended to filter or screen items of electronic mail.

(3) "Network" means a connection comprised of one or more computers that may be accessed by a modem, electronic or optical technology, or other similar means.

(4) "Recipient" means a person who receives an item of electronic mail.

"§ 1-539.26. Action for damages; exceptions; injunctive relief.

(a) Except as otherwise provided in G.S. 1-539.27, if a person transmits or causes to be transmitted to a recipient an item of electronic mail that includes an advertisement, the person is liable to the recipient for civil damages unless:

(1) The person has a preexisting business or personal relationship with the recipient;

(2) The recipient has expressly consented to receive the item of electronic mail from the person; or

(3) The advertisement is readily identifiable as promotional, or contains a statement providing that it is an advertisement, and clearly and conspicuously provides:
a. The legal name, complete street address and electronic mail address of the person transmitting the electronic mail; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1347

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

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b. A notice that the recipient may decline to receive additional electronic mail that includes an advertisement from the person transmitting the electronic mail and the procedures for declining such electronic mail.

(b) If a person is liable to a recipient pursuant to subsection (a) of this section, the recipient may recover from the person:

(1) Actual damages or damages of ten dollars ($10) per item of electronic mail received, whichever is greater; and

(2) Attorneys' fees and costs.

(c) In addition to any other remedy that is allowed pursuant to law, the recipient may apply to the district or superior court of the county in which the recipient resides for an order enjoining the person from transmitting to the recipient any other item of electronic mail that includes an advertisement.

"§ 1-539.27. Immunity for persons who provide users with access to network; applicability to items of electronic mail obtained voluntarily.

(a) If a person provides users with access to a network and, as part of that service, transmits items of electronic mail on behalf of those users, the person is immune from liability for civil damages under this Article, unless the person transmits an item of electronic mail that includes an advertisement he prepared or caused to be prepared.

(b) The provisions of this Article, inclusive, do not apply to an item of electronic mail that is obtained by a recipient voluntarily. This subsection includes, but is not limited to, an item of electronic mail that is obtained by a recipient voluntarily from an electronic bulletin board."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1347

AMENDMENT NO. _____
(to be filled in by Principal Clerk)

H1347-ALB-1

Section 4. Sections 1 and 2 of this act are effective when they become law and apply to transactions occurring on or after April 15, 1998. Section 3 of this act becomes effective December 1, 1998."

SIGNED Wayne Goodwin
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1347
Proposed Committee Substitute H1347-PCS6470

Short Title: Prohibit Internet Taxation. (Public)

Sponsors:

Referred to:

May 20, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE STATE SHALL NOT TAX INTERNET ACCESS CHARGES, SHALL ENFORCE SALES TAXES ON INTERNET COMMERCE ONLY TO THE SAME EXTENT IT ENFORCES SALES TAX ON MAIL-ORDER COMMERCE, AND SHALL IMPOSE NO NEW TAXES ON THE INTERNET OR INTERNET COMMERCE, AND TO IMPOSE LIABILITY ON THOSE WHO TRANSMIT UNSOLICITED ITEMS OF ELECTRONIC MAIL THAT INCLUDE ADVERTISEMENTS (SPAM).

The General Assembly of North Carolina enacts:

Section 1. It is the intent of the General Assembly that no new taxes shall be authorized on Internet access charges, the Internet, or Internet commerce.

Section 2. The Department of Revenue shall enforce the sales and use tax laws with respect to Internet commerce only to the same extent it enforces the sales and use tax laws with respect to mail-order commerce.

Section 3. (a) There are a large number of computer systems in State government with Internet E-mail access, some of them serving agencies and State employees, and some of them serving students in The University of North Carolina System, community colleges, and public schools. SPAM requires more network resources, telephone line charges, online time, diversion of productive time of employees and students, and other needless expense in the State budget for fiscal year 1998-99, which can be reduced by eliminating SPAM.

(b) Subchapter XIV of Chapter 1 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 43E.

"Unsolicited Electronic Mail Advertisements.

"§ 1-539.25. Definitions.

As used in this Article, the following definitions apply:

(1) 'Advertisement' means material that:

a. Advertises for commercial purposes the availability or the quality of real property, goods, or services; or

b. Is otherwise designed or intended to solicit a person to purchase real property, goods, or services.

(2) 'Electronic mail' means a message, a file or other information that is transmitted through a local, regional, or global network, regardless of whether the message, file or other information is:

a. Viewed;

b. Stored for retrieval at a later time;

c. Printed onto paper or other similar material; or

d. Filtered or screened by a computer program that is designed or intended to filter or screen items of electronic mail.

(3) 'Network' means a connection comprised of one or more computers that may be accessed by a modem, electronic or optical technology, or other similar means.

(4) 'Recipient' means a person who receives an item of electronic mail.

"§ 1-539.26. Action for damages; exceptions; injunctive relief.

(a) Except as otherwise provided in G.S. 1-539.27, if a person transmits or causes to be transmitted to a recipient an item of electronic mail that includes an advertisement, the person is liable to the recipient for civil damages unless:

(1) The person has a preexisting business or personal relationship with the recipient;

(2) The recipient has expressly consented to receive the item of electronic mail from the person; or

(3) The advertisement is readily identifiable as promotional, or contains a statement providing that it is an advertisement, and clearly and conspicuously provides:

a. The legal name, complete street address and electronic mail address of the person transmitting the electronic mail; and

b. A notice that the recipient may decline to receive additional electronic mail that includes an advertisement from the person transmitting the electronic mail and the procedures for declining such electronic mail.

(b) If a person is liable to a recipient pursuant to subsection (a) of this section, the recipient may recover from the person:

(1) Actual damages or damages of ten dollars ($10.00) per item of electronic mail received, whichever is greater; and

(2) Attorneys' fees and costs.

(c) In addition to any other remedy that is allowed pursuant to law, the recipient may apply to the district or superior court of the county in which the recipient resides for an order enjoining the person from transmitting to the recipient any other item of electronic mail that includes an advertisement.

"**§ 1-539.27. Immunity for persons who provide users with access to network; applicability to items of electronic mail obtained voluntarily.**

(a) If a person provides users with access to a network and, as part of that service, transmits items of electronic mail on behalf of those users, the person is immune from liability for civil damages under this Article, unless the person transmits an item of electronic mail that includes an advertisement he prepared or caused to be prepared.

(b) The provisions of this Article, inclusive, do not apply to an item of electronic mail that is obtained by a recipient voluntarily. This subsection includes, but is not limited to, an item of electronic mail that is obtained by a recipient voluntarily from an electronic bulletin board."

Section 4. Sections 1 and 2 of this act are effective when they become law and apply to transactions occurring on or after April 15, 1998. Section 3 of this act becomes effective December 1, 1998.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

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

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 1199*
Finance Committee Substitute Adopted 6/25/98
House Committee Substitute Favorable 8/10/98

Short Title: Set Regul. Fees/Increase Various Fees. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEE, TO SET THE INSURANCE REGULATORY CHARGE, TO INCREASE VARIOUS FEES, TO ESTABLISH A FEE FOR FAIRNESS HEARING CONDUCTED BY THE OFFICE OF THE SECRETARY OF STATE, TO INCREASE THE AUTOPSY FEE, AND TO REVISE AND PLACE INTO THE GENERAL STATUTES THE SCHEDULE OF FEES FOR PERMITS UNDER THE WATER QUALITY PROGRAM.

The General Assembly of North Carolina enacts:

PART I. PUBLIC UTILITIES REGULATORY FEE

Section 1. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1998.

PART II. INSURANCE REGULATORY CHARGE

Section 2. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six and five-tenths percent (6.5%) for the 1998 calendar year.

PART III. SECRETARY OF STATE FEES

Section 3. G.S. 10A-7 reads as rewritten:

"**§ 10A-7. Fee with commission application.**

Every applicant for a notarial commission shall pay to this State a nonrefundable fee of ~~twenty-five dollars ($25.00).~~ thirty dollars ($30.00). Every applicant for recommissioning shall pay to this State a nonrefundable fee of ~~twenty-five dollars ($25.00).~~ thirty dollars ($30.00)."

Section 4. G.S. 78A-28(b) reads as rewritten:

"(b) Every person filing a registration statement shall pay a filing fee of ~~one hundred dollars ($100.00), plus a registration fee of one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at which the registered securities are to be offered in this State, but the registration fee may not be less than twenty-five dollars ($25.00) nor more than one thousand five hundred dollars ($1,500).~~ two thousand dollars ($2,000). When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under G.S. 78A-29, the Administrator shall retain the filing fee. A registration statement relating to securities issued or to be issued by a mutual fund, open-end management company, or unit investment trust or relating to other redeemable securities, to be offered for a period in excess of one year, must be renewed annually by payment of a renewal fee of one hundred dollars ($100.00) and by filing any documents or reports that the Administrator may by rule or order require."

Section 5. G.S. 78A-30 is amended by adding a new subsection to read:

"(g) The Administrator shall charge a fee for a fairness hearing that the Administrator holds under this section. The Administrator shall set the fee based upon the time and expenses incurred by the Administrator. The fee may not be less than five hundred dollars ($500.00), and it may not exceed five thousand dollars ($5,000)."

Section 6. G.S. 78A-31(a) reads as rewritten:

"(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

(1) Prior to the initial offer of the security in this State, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, together with a consent to service of process signed by the issuer and with the payment of a notice filing fee of ~~one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at which the securities covered under federal law are to be offered in this State, but the notice filing fee shall not be less than twenty-five dollars ($25.00) or more than one thousand six hundred dollars ($1,600).~~ two thousand dollars ($2,000).

(2) After the initial offer of the security in this State, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the

Administrator, which shall be filed concurrently with the Administrator.

(3) A report of the value of securities covered under federal law that are offered or sold in this State.

(4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee of one hundred dollars ($100.00) and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period.

(5) A notice filed in accordance with this section may be amended after its effective date to increase the securities specified as proposed to be offered. An amendment becomes effective upon receipt by the Administrator. Every person submitting an amended notice filing shall pay a fee calculated in the manner specified in subdivision (1) of this subsection and a filing fee of fifty dollars ($50.00) with respect to the additional securities proposed to be offered."

Section 7. G.S. 147-37 reads as rewritten:

"§ 147-37. Secretary of State; fees to be collected.

When no other charge is provided by law, the Secretary of State shall collect such fees for copying any document or record on file in his office which in his discretion bears a reasonable relation to the quantity of copies supplied and the cost of purchasing or leasing and maintaining copying equipment. These fees may be changed from time to time, but a schedule of fees shall be available on request at all times. In addition to copying charges, the Secretary of State shall collect a fee of ~~six dollars and twenty-five cents ($6.25)~~ ten dollars ($10.00) for certifying any document or record on file in his office or for issuing any certificate as to the facts shown by the records on file in his office."

PART IV. INCREASE AUTOPSY FEE

Section 8. G.S. 130A-389(a) reads as rewritten:

"(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge. A copy of the

report shall be furnished to other persons upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be ~~four hundred dollars ($400.00).~~ one thousand dollars ($1,000)."

PART V. WATER QUALITY FEES

Section 9. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.3D. Fee schedule for water quality permits.**

(a) Annual fees for discharge and nondischarge permits under G.S. 143-215.1. --

(1) Major Individual NPDES Permits. -- The annual fee for an individual permit for a point source discharge of 1,000,000 or more gallons per day, a publically owned treatment works (POTW) that administers a POTW pretreatment program, as defined in 40 Code of Federal Regulations § 403.3 (1 July 1996 Edition), or an industrial waste treatment works that has a high toxic pollutant potential shall be two thousand eight hundred sixty-five dollars ($2,865).

(2) Minor Individual NPDES Permits. -- The annual fee for an individual permit for a point source discharge other than a point source discharge to which subdivision (1) of this subsection applies shall be seven hundred fifteen dollars ($715.00).

(3) Single-Family Residence. -- The annual fee for a certificate of coverage under a general permit for a point source discharge or an individual nondischarge permit from a single-family residence shall be fifty dollars ($50.00).

(4) Stormwater and Wastewater Discharge General Permits. -- The annual fee for a certificate of coverage under a general permit for a point source discharge of stormwater or wastewater shall be eighty dollars ($80.00).

(5) Recycle Systems. -- The annual fee for an individual permit for a recycle system nondischarge permit shall be three hundred dollars ($300.00).

(6) Major Nondischarge Permits. -- The annual fee for an individual permit for a nondischarge of 10,000 or more gallons per day or requiring 300 or more acres of land shall be one thousand ninety dollars ($1,090).

(7) Minor Nondischarge Permits. -- The annual fee for an individual permit for a nondischarge of less than 10,000 gallons per day or requiring less than 300 acres of land shall be six hundred seventy-five dollars ($675.00).

(8) Animal Waste Management Systems. -- The annual fee for animal waste management systems shall be as set out in G.S. 143-215.10G.

(b) Application fee for new discharge and nondischarge permits. -- An application for a new permit of the type set out in subsection (a) of this section shall

be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee will be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Application and annual fees for consent special orders. --

(1) Major consent special orders. -- If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (1) or (6) of subsection (a) of this section, the initial project fee shall be four hundred dollars ($400.00) and the annual fee shall be five hundred dollars ($500.00). These fees shall be in addition to the annual fee due under subsection (a) of this section.

(2) Minor consent special orders. -- If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (2) or (7) of subsection (a) of this section, the initial project fee shall be four hundred dollars ($400.00) and the annual fee shall be two hundred fifty dollars ($250.00). These fees shall be in addition to the annual fee due under subsection (a) of this section.

(d) Fee for major permit modifications. -- An application for a major modification of a permit of the type set out in subsection (a) of this section shall be accompanied by an application fee equal to thirty percent (30%) of the annual fee applicable to that permit. A major modification of a permit is any modification that would allow an increase in the volume or pollutant load of the discharge or nondischarge or that would result in a significant relocation of the point of discharge, as determined by the Commission. This fee shall be in addition to the fees due under subsections (a) and (c) of this section. If the application is denied, the application fee shall not be refunded.

(e) Other fees under this Article. --

(1) Sewer system extension permits. -- The application fee for a permit for the construction of a new sewer system or for the extension of an existing sewer system shall be four hundred dollars ($400.00).

(2) State stormwater permits. -- The application fee for a permit regulating stormwater runoff under G.S. 143-214.7 and G.S. 143-215.1 shall be four hundred twenty dollars ($420.00).

(3) Major water quality certifications. -- The fee for a water quality certification involving one acre or more of wetland fill or 150 feet or more of stream impact shall be four hundred seventy-five dollars ($475.00).

(4) Minor water quality certifications. -- The fee for a water quality certification involving less than one acre of wetland fill or less than 150 feet of stream impact shall be two hundred dollars ($200.00).

(5) Permit for land application of petroleum contaminated soils. -- The fee for a permit to apply petroleum contaminated soil to land shall be four hundred dollars ($400.00).

(6) Fee nonrefundable. -- If an application for a permit or a certification described in this subsection is denied, the application or certification fee shall not be refunded."

Section 10. G.S. 143-215.3(a) reads as rewritten:

"(a) Additional Powers. -- In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.

(1a) To ~~charge~~ adopt fee schedules and collect fees for the following:

a. Processing of applications for permits or registrations issued under ~~Articles~~ Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter;

b. Administering permits or registrations issued under ~~Articles~~ Article 21, other than Parts 1 and 1A, Articles 21A, 21B, ~~or~~ and 38 of this Chapter including monitoring compliance with the terms of those permits; and

c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.

No fee may be charged under this provision, however, to a farmer who submits an application that pertains to his farming operations.

(1b) ~~The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.1 of Article 21 may not exceed four hundred dollars ($400.00).~~ The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars ($500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars ($50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under ~~G.S. 143-215.1 of Article 21~~ Article 21, other than Parts 1 and 1A, and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars ($1,500) per year. Fees for processing all permits under Article 21A and all other sections of ~~Articles 21 and~~ Article 21B shall not exceed one hundred

dollars ($100.00) for any single permit. ~~Notwithstanding any other provision of this subdivision, the~~ The total payment for fees ~~required~~ that are set by the Commission under this subsection for all permits ~~under this subsection~~ for any single facility shall not exceed seven thousand five hundred dollars ($7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for the renewal or amendment.

(1c) Moneys collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:

a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;
b. Improve the quality of permits issued;
c. Improve the rate of compliance of permitted activities with environmental standards; and
d. Decrease the length of the processing period for permit applications.

(1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement

to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.

a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be credited to the Title V Account.

b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.

c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.

(1e) The Commission shall collect the application, annual, and project fees for processing and administering permits, certificates of coverage under general permits, and certifications issued under Parts 1 and 1A of this Article and for compliance monitoring under Parts 1 and 1A of this Article as provided in G.S. 143-215.3D and G.S. 143-215.10G.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article

21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article or by Article 21B of this Chapter.

(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.

(5) To institute such actions in the superior court of any county in which a violation of this Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this Article, Article 21B of this Chapter, or of any official action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused

pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Commission on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S.

143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given in accordance with the provisions of G.S. 150B-21.2.

A person aggrieved by an order of the Commission under this subdivision may seek judicial review of the order under Article 4 of Chapter 150B of the General Statutes without first commencing a contested case. An order may not be stayed while it is being reviewed.

(9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed,

the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require a laboratory facility that performs any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter to be certified annually by the Department, to establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be certified, and to charge a laboratory facility a fee for certification. Fees collected under this subdivision shall be credited to the Water and Air Account and used to administer this subdivision. These fees shall be applied to the cost of certifying commercial, industrial, and municipal laboratory facilities.

(11) Repealed by Session Laws 1983, c. 296, s. 6.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article or Article 21B of this Chapter. In

such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this subdivision shall apply.

(13) Repealed by Session Laws 1983, c. 296, s. 6.

(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143."

Section 11. G.S. 143-215.3A reads as rewritten:

"§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.

(a) The Water and Air Quality Account is established as a nonreverting account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. 105-449.125, 105-449.134, and 105-449.43 shall be used to administer the air quality program. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

(1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.

(2) Fees credited to the Title V Account.

(3) Fees credited to the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund under G.S. 143-215.3B.
(4) Fees collected under G.S. 143-215.28A.
(5) Fees collected under G.S. 143-215.94C shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a1) The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a), after deducting those monies collected under G.S. ~~143-215.3(A)(1d),~~ 143-215.3(a)(1d), shall not exceed thirty percent (30%) of the total budgets from all sources of environmental permitting and compliance programs within the Department. This subsection shall not be construed to relieve any person of the obligation to pay a fee established under this Article or Articles 21A, 21B, or 38 of this Chapter.

(b) The Title V Account is established as a nonreverting account within the Department. Revenue in the Account shall be used for developing and implementing a permit program that meets the requirements of Title V. The Title V Account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect costs required to develop and administer the Title V permit program, and fees collected under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V program. Expenses of the Air Quality Compliance Advisory Panel, the ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

(b1) The I & M Air Pollution Control Account is established as a nonreverting account within the Department. Fees transferred to the Division of Air Quality of the Department pursuant to G.S. 20-183.7(c)(2) shall be credited to the I & M Air Pollution Control Account and shall be applied to the costs of developing and implementing an air pollution control program for mobile sources.

(c) The Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the State's environmental permitting programs contained within such Department. In addition, the Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the Title V program. The reports shall include, but are not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

Section 12. G.S. 143-215.10G reads as rewritten:

"**§ 143-215.10G. Fees for animal waste management systems.**

(a) Department shall charge an annual permit fee of all animal operations that are subject to a permit under G.S. 143-215.10C for animal waste management systems according to the following schedule:

(1) For a system with a design capacity of 38,500 or more and less than 100,000 pounds steady state live weight, fifty dollars ($50.00).

(2) For a system with a design capacity of 100,000 or more and less than 800,000 pounds steady state live weight, one hundred fifty dollars ~~($100.00).~~ ($150.00).

(3) For a system with a design capacity of 800,000 pounds or more steady state live weight, ~~two~~ three hundred dollars ~~($200.00).~~ ($300.00).

(b) An application for a new permit under this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee will be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Fees collected under this section shall be credited to the Water and Air Quality Account. The Department shall use fees collected pursuant to this section to cover the costs of administering this Part."

Section 13. G.S. 90A-42(a) reads as rewritten:

"(a) The Commission, in establishing procedures for implementing the requirements of this Article, shall impose the following schedule of fees:

(1) Examination including Certificate, ~~$75.00;~~ $85.00;

(2) Temporary Certificate, $200.00;

(3) Temporary Certification Renewal, $300.00;

(4) Conditional Certificate, $75.00;

(5) Repealed by Session Laws 1987, c. 582, s. 3.

(6) Reciprocity Certificate, $100.00;

(6a) Voluntary Conversion Certificate, $50.00;

(7) Annual Renewal, ~~$30.00;~~ $35.00;

(8) Replacement of Certificate, $20.00;

(9) Late Payment of Annual Renewal, $50.00 penalty in addition to all current and past due annual renewal fees plus one hundred dollars ($100.00) penalty per year for each year for which annual renewal fees were not paid prior to the current year; and

(10) Mailing List Charges -- The Commission may provide mailing lists of certified water pollution control system operators and of water pollution control system operators to persons who request such lists. The charge for such lists shall be twenty-five dollars ($25.00) for each such list provided."

Section 14. G.S. 90A-47.4(a) reads as rewritten:

"(a) An applicant for certification under this Part shall pay a fee of ~~ten dollars ($10.00)~~ twenty-five dollars ($25.00) for the examination and the certificate."

Section 15. Subsection (d) of Section 27.13 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) is repealed.

Section 16. This act shall not be construed to relieve any person of the obligation to pay any fees due for any activity described in this act under the schedule of fees in effect prior to the date this act becomes effective.

PART VI. EFFECTIVE DATES

Section 17. PART V of this act becomes effective 1 January 1999. The remainder of this act becomes effective 1 July 1998. Section 8 of this act applies to autopsies or other studies performed on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1199*
Finance Committee Substitute Adopted 6/25/98
House Committee Substitute Favorable 8/10/98
PROPOSED HOUSE FINANCE COMMITTEE SUBSTITUTE
S1199-CSRBX-9/2

Short Title: Increase Various Fees/Set Reg. Fees (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO INCREASE VARIOUS FEES, TO ESTABLISH A FEE FOR FAIRNESS HEARING CONDUCTED BY THE OFFICE OF THE SECRETARY OF STATE, TO INCREASE THE AUTOPSY FEE, TO REVISE AND PLACE INTO THE GENERAL STATUTES THE SCHEDULE OF FEES FOR PERMITS UNDER THE WATER QUALITY PROGRAM, TO INCREASE THE PROCESS AND FACILITIES FEES IN THE GENERAL COURT OF JUSTICE, TO SET THE PUBLIC UTILITY REGULATORY FEE, AND TO SET THE INSURANCE REGULATORY CHARGE.

The General Assembly of North Carolina enacts:

PART I. SECRETARY OF STATE FEES

Section 1. G.S. 10A-7 reads as rewritten:

"**§ 10A-7. Fee with commission application.**

Every applicant for a notarial commission shall pay to this State a nonrefundable fee of ~~twenty-five dollars ($25.00).~~ thirty dollars ($30.00). Every applicant for recommissioning shall pay to this State a nonrefundable fee of ~~twenty-five dollars ($25.00).~~ thirty dollars ($30.00)."

Section 2. G.S. 78A-28 reads as rewritten:

"**§78A-28. Provisions applicable to registration generally.**

(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered dealer.

"(b) Every person filing a registration statement shall pay a filing fee of ~~one hundred dollars ($100.00), plus a registration fee of one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at which the registered securities are to be offered in this State, but the registration fee may not be less than twenty-five dollars ($25.00) nor more than one thousand five hundred dollars ($1,500).~~ two thousand dollars ($2,000). When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under G.S. 78A-29, the Administrator shall retain the filing fee. A registration statement relating to ~~securities issued or to be issued by a mutual fund, open-end management company, or unit investment trust or relating to other~~ redeemable securities, other than a security covered under federal law, to be offered for a period in excess of one year, must be renewed annually by payment of a renewal fee of one hundred dollars ($100.00) and by filing any documents or reports that the Administrator may by rule or order require.

(c) Every registration statement shall specify (i) the amount of securities to be offered in this State; (ii) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and (iii) any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) Any document filed under this Chapter or a predecessor law within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The Administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) In the case of a nonissuer distribution, information may not be required under G.S. 78A-27 or 78A-28(i) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g) The Administrator may by rule or order require as a condition of registration by qualification or coordination (i) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different

from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (ii) that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the securities either in this State or elsewhere. The Administrator may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(h) Except during the time a stop order is in effect under G.S. 78A- 29, a registration statement relating to ~~securities issued or to be issued by a mutual fund, open-end management company, or unit investment trust or relating to other~~ redeemable securities, other than a security covered under federal law, to be offered for a period in excess of one year, expires on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. Every other registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under G.S. 78A-29. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (i) so long as the registration statement is effective and (ii) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under G.S. 78A-29 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the Administrator.

(i) So long as a registration statement is effective, the Administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose progress of the offering.

(j) A registration statement filed in accordance with subsection (b) of this section may be amended after its effective date to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the Administrator so orders. Every person filing such an amendment shall pay a ~~registration fee calculated in the manner specified in subsection (b) and a~~ filing fee of fifty dollars ($50.00) with respect to the additional securities proposed to be offered."

Section 3. G.S. 78A-30 is amended by adding a new subsection to read:

"(g) The Administrator shall charge a fee for a fairness hearing that the Administrator holds under this section. The Administrator shall set the fee based upon the time and expenses incurred by the Administrator. The fee may not be less than five hundred dollars ($500.00), and it may not exceed five thousand dollars ($5,000)."

Section 4. G.S. 78A-31(a) reads as rewritten:

"(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

(1) Prior to the initial offer of the security in this State, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, together with a consent to service of process signed by the issuer and with the payment of a notice filing fee of ~~one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at which the securities covered under federal law are to be offered in this State, but the notice filing fee shall not be less than twenty-five dollars ($25.00) or more than one thousand six hundred dollars ($1,600).~~ two thousand dollars ($2,000).

(2) After the initial offer of the security in this State, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, which shall be filed concurrently with the Administrator.

(3) A report of the value of securities covered under federal law that are offered or sold in this State.

(4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee of one hundred dollars ($100.00) and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period.

(5) A notice filed in accordance with this section may be amended after its effective date to increase the securities specified as proposed to be offered. An amendment becomes effective upon receipt by the Administrator. Every person submitting an amended notice filing shall pay ~~a fee calculated in the manner specified in subdivision (1) of this subsection and~~ a filing fee of fifty dollars ($50.00) with respect to the additional securities proposed to be offered."

Section 5. G.S. 147-37 reads as rewritten:

"**§ 147-37. Secretary of State; fees to be collected.**

When no other charge is provided by law, the Secretary of State shall collect such fees for copying any document or record on file in his office which in his discretion bears a reasonable relation to the quantity of copies supplied and the cost of purchasing or leasing and maintaining copying equipment. These fees may be changed from time to time, but a schedule of fees shall be available on request at all times. In addition to copying charges, the Secretary of State shall collect a fee of ~~six dollars and twenty-five cents ($6.25)~~ ten dollars ($10.00) for certifying any document or record on file in his office or for issuing any certificate as to the facts shown by the records on file in his office."

PART II. INCREASE AUTOPSY FEE

Section 6. G.S. 130A-389(a) reads as rewritten:

"(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or,

if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge. A copy of the report shall be furnished to other persons upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be ~~four hundred dollars ($400.00).~~ one thousand dollars ($1,000)."

PART III. WATER QUALITY FEES

Section 7. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.3D. Fee schedule for water quality permits.**

(a) Annual fees for discharge and nondischarge permits under G.S. 143-215.1. --

(1) Major Individual NPDES Permits. -- The annual fee for an individual permit for a point source discharge of 1,000,000 or more gallons per day, a publically owned treatment works (POTW) that administers a POTW pretreatment program, as defined in 40 Code of Federal Regulations § 403.3 (1 July 1996 Edition), or an industrial waste treatment works that has a high toxic pollutant potential shall be two thousand eight hundred sixty-five dollars ($2,865).

(2) Minor Individual NPDES Permits. -- The annual fee for an individual permit for a point source discharge other than a point source discharge to which subdivision (1) of this subsection applies shall be seven hundred fifteen dollars ($715.00).

(3) Single-Family Residence. -- The annual fee for a certificate of coverage under a general permit for a point source discharge or an individual nondischarge permit from a single-family residence shall be fifty dollars ($50.00).

(4) Stormwater and Wastewater Discharge General Permits. -- The annual fee for a certificate of coverage under a general permit for a point source

discharge of stormwater or wastewater shall be eighty dollars ($80.00).

(5) Recycle Systems. -- The annual fee for an individual permit for a recycle system nondischarge permit shall be three hundred dollars ($300.00).

(6) Major Nondischarge Permits. -- The annual fee for an individual permit for a nondischarge of 10,000 or more gallons per day or requiring 300 or more acres of land shall be one thousand ninety dollars ($1,090).

(7) Minor Nondischarge Permits. -- The annual fee for an individual permit for a nondischarge of less than 10,000 gallons per day or requiring less than 300 acres of land shall be six hundred seventy-five dollars ($675.00).

(8) Animal Waste Management Systems. -- The annual fee for animal waste management systems shall be as set out in G.S. 143-215.10G.

(b) Application fee for new discharge and nondischarge permits. -- An application for a new permit of the type set out in subsection (a) of this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee will be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Application and annual fees for consent special orders. --

(1) Major consent special orders. -- If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (1) or (6) of subsection (a) of this section, the initial project fee shall be four hundred dollars ($400.00) and the annual fee shall be five hundred dollars ($500.00). These fees shall be in addition to the annual fee due under subsection (a) of this section.

(2) Minor consent special orders. -- If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (2) or (7) of subsection (a) of this section, the initial project fee shall be four hundred dollars ($400.00) and the

annual fee shall be two hundred fifty dollars ($250.00). These fees shall be in addition to the annual fee due under subsection (a) of this section.

(d) Fee for major permit modifications. -- An application for a major modification of a permit of the type set out in subsection (a) of this section shall be accompanied by an application fee equal to thirty percent (30%) of the annual fee applicable to that permit. A major modification of a permit is any modification that would allow an increase in the volume or pollutant load of the discharge or nondischarge or that would result in a significant relocation of the point of discharge, as determined by the Commission. This fee shall be in addition to the fees due under subsections (a) and (c) of this section. If the application is denied, the application fee shall not be refunded.

(e) Other fees under this Article. --

(1) Sewer system extension permits. -- The application fee for a permit for the construction of a new sewer system or for the extension of an existing sewer system shall be four hundred dollars ($400.00).

(2) State stormwater permits. -- The application fee for a permit regulating stormwater runoff under G.S. 143-214.7 and G.S. 143-215.1 shall be four hundred twenty dollars ($420.00).

(3) Major water quality certifications. -- The fee for a water quality certification involving one acre or more of wetland fill or 150 feet or more of stream impact shall be four hundred seventy-five dollars ($475.00).

(4) Minor water quality certifications. -- The fee for a water quality certification involving less than one acre of wetland fill or less than 150 feet of stream impact shall be two hundred dollars ($200.00).

(5) Permit for land application of petroleum contaminated soils. -- The fee for a permit to apply petroleum contaminated soil to land shall be four hundred dollars ($400.00).

(6) Fee nonrefundable. -- If an application for a permit or a certification described in this subsection is denied, the application or certification fee shall not be refunded."

Section 8. G.S. 143-215.3(a) reads as rewritten:

"(a) Additional Powers. -- In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.

(1a) To ~~charge~~ adopt fee schedules and collect fees for the following:

a. Processing of applications for permits or registrations issued under ~~Articles~~ Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter;

b. Administering permits or registrations issued under ~~Articles~~ Article 21, other than Parts 1 and 1A, Articles 21A, 21B, ~~or~~ and 38 of this Chapter including monitoring compliance with the terms of those permits; and

c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.

No fee may be charged under this provision, however, to a farmer who submits an application that pertains to his farming operations.

(1b) ~~The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.1 of Article 21 may not exceed four hundred dollars ($400.00).~~ The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars ($500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars ($50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under ~~G.S. 143-215.1 of Article 21~~ Article 21, other than Parts 1 and 1A, and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and

may not exceed one thousand five hundred dollars ($1,500) per year. Fees for processing all permits under Article 21A and all other sections of ~~Articles 21 and~~ Article 21B shall not exceed one hundred dollars ($100.00) for any single permit. ~~Notwithstanding any other provision of this subdivision, the~~ The total payment for fees ~~required~~ that are set by the Commission under this subsection for all permits ~~under this subsection~~ for any single facility shall not exceed seven thousand five hundred dollars ($7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for the renewal or amendment.

(1c) Moneys collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:

a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;

b. Improve the quality of permits issued;

c. Improve the rate of compliance of permitted activities with environmental standards; and
d. Decrease the length of the processing period for permit applications.

(1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.

a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be credited to the Title V Account.
b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.
c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of

administering the Title V permit program in that fiscal year.

(1e) The Commission shall collect the application, annual, and project fees for processing and administering permits, certificates of coverage under general permits, and certifications issued under Parts 1 and 1A of this Article and for compliance monitoring under Parts 1 and 1A of this Article as provided in G.S. 143-215.3D and G.S. 143-215.10G.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article or by Article 21B of this Chapter.

(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.

(5) To institute such actions in the superior court of any county in which a violation of this Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this Article, Article 21B of this Chapter, or of any official action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully,

or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Commission on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other

law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given in accordance with the provisions of G.S. 150B-21.2.

A person aggrieved by an order of the Commission under this subdivision may seek judicial review of the order under Article 4 of Chapter 150B of the General Statutes without first commencing a contested case. An order may not be stayed while it is being reviewed.

(9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require a laboratory facility that performs any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter to be certified annually by the Department, to establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be certified, and to charge a laboratory facility a fee for

certification. Fees collected under this subdivision shall be credited to the Water and Air Account and used to administer this subdivision. These fees shall be applied to the cost of certifying commercial, industrial, and municipal laboratory facilities.

(11) Repealed by Session Laws 1983, c. 296, s. 6.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article or Article 21B of this Chapter. In such

event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this subdivision shall apply.

(13) Repealed by Session Laws 1983, c. 296, s. 6.

(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143."

Section 9. G.S. 143-215.3A reads as rewritten:

"**§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.**

(a) The Water and Air Quality Account is established as a nonreverting account within the Department. Revenue in the

Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. 105-449.125, 105-449.134, and 105-449.43 shall be used to administer the air quality program. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

(1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.

(2) Fees credited to the Title V Account.

(3) Fees credited to the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund under G.S. 143-215.3B.

(4) Fees collected under G.S. 143-215.28A.

(5) Fees collected under G.S. 143-215.94C shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a1) The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a), after deducting those monies collected under G.S. ~~143-215.3(A)(1d),~~ 143-215.3(a)(1d), shall not exceed thirty percent (30%) of the total budgets from all sources of environmental permitting and compliance programs within the Department. This subsection shall not be construed to relieve any person of the obligation to pay a fee established under this Article or Articles 21A, 21B, or 38 of this Chapter.

(b) The Title V Account is established as a nonreverting account within the Department. Revenue in the Account shall be used for developing and implementing a permit program that meets the requirements of Title V. The Title V Account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect costs required to develop and administer the Title V permit program, and fees collected under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V program. Expenses of the Air Quality Compliance Advisory Panel, the ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

(b1) The I & M Air Pollution Control Account is established as a nonreverting account within the Department. Fees transferred to the Division of Air Quality of the Department pursuant to G.S. 20-183.7(c)(2) shall be credited to the I & M Air Pollution Control Account and shall be applied to the costs of developing and implementing an air pollution control program for mobile sources.

(c) The Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the State's environmental permitting programs contained within such Department. In addition, the Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the Title V program. The reports shall include, but are not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

Section 10. G.S. 143-215.10G reads as rewritten:

"**§ 143-215.10G. Fees for animal waste management systems.**

(a) Department shall charge an annual permit fee of all animal operations that are subject to a permit under G.S. 143-215.10C for animal waste management systems according to the following schedule:

(1) For a system with a design capacity of 38,500 or more and less than 100,000 pounds steady state live weight, fifty dollars ($50.00).

(2) For a system with a design capacity of 100,000 or more and less than 800,000 pounds steady state live weight, one hundred fifty dollars ~~($100.00).~~ ($150.00).

(3) For a system with a design capacity of 800,000 pounds or more steady state live weight, ~~two~~ three hundred dollars ~~($200.00).~~ ($300.00).

(b) An application for a new permit under this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee will be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Fees collected under this section shall be credited to the Water and Air Quality Account. The Department shall use fees

collected pursuant to this section to cover the costs of administering this Part."

Section 11. G.S. 90A-42(a) reads as rewritten:

"(a) The Commission, in establishing procedures for implementing the requirements of this Article, shall impose the following schedule of fees:

(1) Examination including Certificate, ~~$75.00;~~ $85.00;
(2) Temporary Certificate, $200.00;
(3) Temporary Certification Renewal, $300.00;
(4) Conditional Certificate, $75.00;
(5) Repealed by Session Laws 1987, c. 582, s. 3.
(6) Reciprocity Certificate, $100.00;
(6a) Voluntary Conversion Certificate, $50.00;
(7) Annual Renewal, ~~$30.00;~~ $35.00;
(8) Replacement of Certificate, $20.00;
(9) Late Payment of Annual Renewal, $50.00 penalty in addition to all current and past due annual renewal fees plus one hundred dollars ($100.00) penalty per year for each year for which annual renewal fees were not paid prior to the current year; and
(10) Mailing List Charges -- The Commission may provide mailing lists of certified water pollution control system operators and of water pollution control system operators to persons who request such lists. The charge for such lists shall be twenty-five dollars ($25.00) for each such list provided."

Section 12. G.S. 90A-47.4(a) reads as rewritten:

"(a) An applicant for certification under this Part shall pay a fee of ~~ten dollars ($10.00)~~ twenty-five dollars ($25.00) for the examination and the certificate."

Section 13. Subsection (d) of Section 27.13 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) is repealed.

Section 14. This Part of this act shall not be construed to relieve any person of the obligation to pay any fee due for any activity described in this Part under the schedule of fees in effect prior to the date this Part becomes effective.

PART IV. INCREASE COURT FEES

Section 15. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison

sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

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

(2) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve dollars ($12.00) in the district court, 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 ($15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

(6) For support of the General Court of Justice, for the issuance by the clerk of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2, the sum of fifty dollars ($50.00), to be remitted to the State Treasurer. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial

official, a prosecutor, or a law-enforcement officer, the court shall waive this fee."

Section 16. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve dollars ($12.00) in cases heard before a magistrate, and the sum of ~~ten dollars ($10.00)~~ sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which 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 in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of fifty-five dollars ($55.00) in the superior court, and the sum of forty dollars ($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 shall be remitted to the State Treasurer."

Section 17. G.S. 7A-306(a) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00)~~ ten dollars ($10.00) to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(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 shall be remitted to the State Treasurer."

Section 18. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00),~~ ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(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 collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any

account or report disclosing such additional value. For each filing the minimum fee shall be ten dollars ($10.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of fifteen dollars ($15.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of seventeen dollars ($17.00)."

Section 19. G.S. 7A-311(a) reads as rewritten:

"(a) In a civil action or special proceeding, the following fees and commissions shall be assessed, collected, and remitted to the county:

(1) a. ~~Effective October 1, 1990, for every civil action filed on or after that date, for~~ For each item of civil ~~process,~~ process served, including summons, subpoenas, notices, motions, orders, writs and ~~pleadings served,~~ pleadings, the sum of ~~five dollars ($5.00).~~ ten dollars ($10.00). When two or more items of civil process are served simultaneously on one party, only one ~~five dollar ($5.00)~~ ten dollar ($10.00) fee shall be charged.

b. When an item of civil process is served on two or more persons or organizations, a separate service charge shall be made for each person or organization. If the process is served, or attempted to be served, by a city policeman,

the fee shall be remitted to the city rather than the county. If the process is served, or attempted to be served by the sheriff, the fee shall be remitted to the county. This subsection shall not apply to service of summons to jurors.

(2) For the seizure of personal property and its care after seizure, all necessary expenses, in addition to any fees for service of process.

(3) For all sales by the sheriff of property, either real or personal, or for funds collected by the sheriff under any judgment, five percent (5%) on the first five hundred dollars ($500.00), and two and one-half percent (2 1/2%) on all sums over five hundred dollars ($500.00), plus necessary expenses of sale. Whenever an execution is issued to the sheriff, and subsequently while the execution is in force and outstanding, and after the sheriff has served or attempted to serve such execution, the judgment, or any part thereof, is paid directly or indirectly to the judgment creditor, the fee herein is payable to the sheriff on the amount so paid. The judgment creditor shall be responsible for collecting and paying all execution fees on amounts paid directly to the judgment creditor.

(4) For execution of a judgment of ejectment, all necessary expenses, in addition to any fees for service of process.

(5) For necessary transportation of individuals to or from State institutions or another state, the same mileage and subsistence allowances as are provided for State employees."

PART V. PUBLIC UTILITIES REGULATORY FEE

Section 20. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1998.

PART VI. INSURANCE REGULATORY CHARGE

Section 21. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six percent (6%) for the 1998 calendar year.

Section 22. G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term "insurance company" means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except a service corporation subject to Article 65 of this Chapter. A health maintenance organization subject to Article 67 of this Chapter is not subject to those taxes and is therefore not subject to the charge levied in this section. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) ~~additional~~ Additional taxes imposed by G.S. ~~105-228.8,~~ 105-228.8.

(2) The ~~the~~ additional local fire and lightning tax imposed by G.S. ~~105-228.5(d)(4), and any~~ 105-228.5(d)(4).

(3) Any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. ~~97-133(a) shall be disregarded.~~ 97-133(a).

(4) Any tax credits allowed under Chapter 105 of the General Statutes other than tax payments made by or on behalf of the taxpayer."

PART VII.

Section 23. PARTS 1, II, and IV of this act become effective November 1, 1998; PART II applies to autopsies or other studies performed on or after November 1, 1998, and PART IV applies to fees assessed or paid on or after November 1, 1998. PART III of this act becomes effective January 1, 1999. PART V of this act becomes effective July 1, 1998. PART VI of this act becomes effective January 1, 1998. The remainder of this act is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

DATE: September 2, 1998

TO: House Finance

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: Addition of Utility Rates to SB 1199

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Utilities Special Fund	8.50	($.67 million increase over FY 1997-98)			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Utility Commission.

EFFECTIVE DATE: November 1, 1998.

BILL SUMMARY:
This section of the bill sets the utilities regulatory fee at 0.09% of each public utilities' North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1998. **(This maintains the current 0.09% rate set in fiscal year 1997-98.)** The revenue generated from this fee supports the operations of the North Carolina Utilities Commission and Public Staff.

ASSUMPTIONS AND METHODOLOGY:

Per G.S. 62-302(b)(2), the percentage rate established by the General Assembly and assessed by the Commission "may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund." The Utilities Commission estimates that

combined operations of the Commission and the Public Staff in FY 1998-99 will require expenditures of not less than $9,297,845. Revenues generated by the utilities regulatory fee are estimated at $8,500,000. The balance will be derived from other revenues generated by Commission fees and charges, or from the Accumulated Fee Margin Reserve Account.

The Utilities Commission indicates that the status of the Accumulated Fee Margin Reserve is as follows:

Balance as of 7/1/98	$ 9,587,836
Add: Estimated Collections and Interest for FY 1998-99	$ 9,356,285
Total Funds Available	$18,944,121
Less: Estimated FY 1998-99 Expenditures Reimbursable from Fees	$(9,297,845)*
Estimated Margin Reserve for Period Ending 6/30/99	$ 9,646,276

** Not included in FY 1998-99 are the estimated costs incurred by the Legislative Study Commission on the Future of Electric Service in North Carolina. Study Commission expenses are to be refunded from the Utilities Commission and Public Staff Fund (Chapter 483, Section 10.1, 1997 Session Laws). The amount is expected to be $900,000. Additional estimated expenses include any legislative salary increase for FY 1998-99 and costs associated with Year 2000 conversion (estimated to be $150,000).*

Based on the projected Fee Margin Reserve, the fee of 0.09% should be sufficient to cover the operations of the Utilities Commission and Public Staff.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 1199 Proposed House Finance Committee Substitute
SHORT TITLE: Set Regulatory Fees/Increase Various Fees
SPONSOR(S): Senator Odom

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($million)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Sec. of State Fees	.39	.59	.61	.64	.67
DHHS Receipt - Autopsy	.45	.60	.60	.60	.60
DENR Animal Systems	(.09)	(.25)	(.31)	(.34)	(.34)
TOTAL GENERAL FUND	.75	.94	.90	.90	.93
Water & Air Quality Account (Permit Fees)					
Fees Change Non-Animal	.35	.70	.70	.70	.70
Fees Change Animal Systems	.14	.38	.46	.50	.50
TOTAL W&A ACCT.	.49	1.08	1.16	1.20	1.20
DENR Water System					
TOTAL Contract Account	.04	.08	.08	.08	.08
Local Government					
Criminal Service Fee	3.89	5.95	6.06	6.19	6.31
Criminal Facilities Fee	4.22	6.47	6.60	6.73	6.86
Civil Service Fee	1.49	2.27	2.32	2.37	2.41
Civil Facilities Fee	2.02	3.09	3.15	3.21	3.28
TOTAL LOCAL GOV.	11.62	17.78	18.13	18.50	18.86
EXPENDITURES					
General Fund					
DHHS - Autopsy Payments	.18	.24	.24	.24	.24
DENR Special Funds					
Water & Air Quality Acct.	.49	1.08	1.16	1.20	1.20

Water System Contract Acct.	.04	.08	.08	.08	.08
Counties - Autopsy fees	1.18	1.57	1.57	1.57	1.57

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of the Secretary of State, Department of Health and Human Services, Department of Environment and Natural Resources, Judicial Department, County and Municipal Finance Offices.

EFFECTIVE DATE: Part III (water quality fees) becomes effective January 1, 1999. The remainder of the act becomes effective November 1, 1998.

BILL SUMMARY: Part I increases several fees collected by the Secretary of State and creates a new fee for fairness hearings conducted by the Secretary of State. Part II increases the fee paid by the state and counties for conducting an autopsy. Part III revises the schedule of permit fees under the Water Quality program and places the new fee schedule into the statutes. Part IV increases the process and facilities fees in the General Court of Justice.

ASSUMPTIONS AND METHODOLOGY:

Part One: Secretary of State Fees

Section 1 - Notary Commissions (GS 10A-7)

The fee to obtain and to renew a notary commission is increased from $25 to $30. The Secretary of State reports annual average increases of 2.72% in the number of initial appointments over the past five fiscal years (from 93-94 to 97-98). Based on the 97-98 figure of 14,147, the number of initial appointments for 1998-99 through 2002-03 is projected using a 2.72% annual average increase. The numbers below represent the projected number of initial appointments in the out years.

1998-99	1999-00	2000-01	2001-02	2002-03
14,532	14,927	15,333	15,750	16,178

The additional revenue from the fee increase is calculated by multiplying the number of initial appointments (above) by the $5 fee increase. The projected revenue by fiscal year appears below:

1998-99	1999-00	2000-01	2001-02	2002-03
$72,660	$74,635	$76,665	$78,750	$80,890

The Secretary of State reports an annual average increase of 8.35% in the number of notary commission reappointments for the past five fiscal years (93-94 to 97-98). Relying on the 97-98

figure of 19,937 reappointments, the number of reappointments for 1998-99 through 2002-03 is projected below:

1998-99	1999-00	2000-01	2001-02	2002-03
21,602	23,406	25,360	27,478	29,772

The additional revenue from the $5 increase in the notary commission reappointment fee is shown below (by fiscal year).

1998-99	1999-00	2000-01	2001-02	2002-03
$108,010	$117,030	$126,800	$137,390	$148,860

Sections 2 & 4 - Registration (GS 78A-28(b) & 31(a))
The registration/filing fee for companies selling investment securities and mutual funds is set at a flat $2,000 rate. The current fee is based on volume and is set at 1/10 of 1% of the maximum aggregate offering price, not to exceed $1,600. The Secretary of State reports 550 initial mutual fund registrations during the 1997 calendar year, and projects 650 such registrations for the 1998 calendar year. The projected 650 registrations x $400 (the difference in the current maximum and the proposed $2,000 fee) yields $260,000 in additional revenues from the flat fee for FY 1999. The Secretary of State did not provide registration projections for the out years. Relying on the 1998 figure of 650 registrations, results in a stable estimate of $260,000 in additional revenues from the increase for the 1998-99 to 2002-03 years.

Section 3 - Fairness Hearings (GS 78A-30(g))
The new fee for fairness hearings is based upon the time and expenses incurred by the Secretary of State staff. The fee shall be a minimum of $500 and a maximum of $5,000. The Director of the Securities Division of the Secretary of State conducts between 30-35 hearings annually. It takes the Director from a minimum of 5-6 hours to a maximum of between 18-20 hours to prepare for and conduct a hearing, and to generate a post-hearing Order. The Secretary of State recommends assessing a flat $500 fee for all hearings, and $200 per hour for all staff time devoted to a hearing in excess of five hours, up to a maximum of $5,000.

Relying on the Department's reported experience above, 13 hours of staff time (the midpoint) is devoted to the average hearing. The expected revenue as a result of assessing fees for Fairness Hearings follows:

1.) Multiply the expected number of cases times the $500 flat fee.
   a.) Given the reported 30-35 hearings per year, 32.5 hearings (the midpoint) is projected for the out years.
   b.) The $500 fee multiplied by 32.5 yields $16,250 in revenue from the flat fee.

2.) Multiply the $200 hourly fee times the number of hours in excess of five.
   a.) The average (or expected) 13 hours per hearing projected above is used to determine the number of hours in excess of five. On average, Secretary of State staff expends an extra eight hours (in excess of five) on individual hearings.

b.) The $200 hourly fee times the eight hours (in excess of five) yields $1,600 in revenue per hearing.
c.) The $1,600 revenue per hearing times the expected 32.5 hearing yields $52,000.

3.) Add the $16,250 to the $52,000 for a total of $68,250 in revenue from Fairness Hearings fees.

Section 5 - Authentications (GS 147-37)
Document Certification Fees (Authentications and Apostilles) are increased from $6.25 per document to $10 per document. The Secretary of State reports that there were 5,359 total documents certified in FY 1996, 11,249 in FY 1997, and 13,200 projected for FY 1998. The Department experienced an annual average increase in document certifications of 64% for the past two fiscal years. The 17% increase from FY '97 to FY '98 appears to be a much more reliable measure of change than the 110% increase from FY '96 to FY '97. This note relies on the 17% increase to calculate a projected 15,444 document certifications for FY 1999. The 15,444 document certifications x $3.75 (the difference in the fee) yields $57,915 in additional revenues from the fee for FY 1999. The additional revenue projections for the out years appear below:

1998-99	1999-00	2000-01	2001-02	2002-03
$57,915	$67,761	$79,280	$92,757	$108,526

The total additional revenue resulting from Documentation Certification, Securities Registration, fairness hearings, and Notary Commission fee increases in the Department of the Secretary of State appear below:

	1998-99	1999-00	2000-01	2001-02	2002-03
Notary fees	$135,503	$191,665	$203,465	$216,140	$229,750
Securities	173,342	260,000	260,000	260,000	260,000
Fairness hearings	45,502	68,250	68,250	68,250	68,250
Authentication	38,612	67,761	79,280	92,757	108,526
	$392,959	$587,676	$610,995	$637,147	$666,526

The FY 1998-9 fiscal estimate listed in the chart has been adjusted for the November 1998 effective date.

Part Two: Autopsy Fee

Section six increases the fee for autopsies from $400 to $1,000. According to the Office of the Chief Medical Examiner, there are approximately 3,570 medical examiner autopsies performed each year. This number is expected to remain constant. Of the medical examiner autopsies performed each year, approximately 2,010 are performed by private contracted pathologists,

1,260 are performed at the Office of the Chief Medical Examiner in Chapel Hill, and 300 are performed at the Mecklenburg County Office. Payment for these autopsies is as follows:

402	paid by the state to private contracted pathologists
1,608	paid by the county to private contracted pathologists
1,008	paid by the county to the state
552	no payment, conducted by the state for the state
3,570	TOTAL AUTOPSIES PERFORMED

The increase in costs paid by the state to private contracted pathologists is computed below:

402 x $400 = $160,800
- 402 x $1,000 = $402,000
$241,200

The cost increase for the state of $241,200 is offset by the autopsy fees paid to the state from the counties. (When adjusted for the November effective date the actual expenditure estimate is $180,900.

As shown above, the counties pay the Office of the Chief Medical Examiner for 1008 autopsies each year. The increased revenue to the state generated by a $600 increase in the autopsy fee is $604,800. When adjusted for the November effective date, the FY 1998-9 estimate for this item is $453,600.

The increased cost for counties is $1,569,600 a year based on a $600 for the 2,616 autopsies the counties pay for each year. 1,608 autopsies are performed each year by private contracted pathologists and 1,008 autopsies are performed by the state. When adjusted for the November effective date the FY 1998-9 expenditure is $1,177,200.

Part Three: Water Quality Fees

Funding for programs administered by the Water Quality Section in the Department of Environment and Natural Resources (DENR) is provided through three sources: federal funds, state general fund appropriations, and permit fee receipts. In 1996 the Division of Water Quality projected a shortfall in water quality permit fee receipts. In response, the General Assembly appropriated $1 million for the 1997-98 fiscal year in a special reserve fund to help offset any unrealized permit fee revenue and to allow for additional analysis of a variety of water quality funding issues. (Based on year to date actual collections, the Office of State Budget and Management does not expect the Division to draw funds from the reserve for the 1997-98 fiscal year). The Environmental Review Commission (ERC) created the Water Quality Funding Working Group comprising representatives of the regulated community to evaluate the state's water quality programs, funding sources and budgetary needs, as well as make recommendations to improve the current funding structure. Part V of this bill is a result of the working group's effort and is recommended by the ERC.

Focus on water quality funding needs has shifted from total budgetary requirements to determining an appropriate level of operating support, which includes data processing and communications, travel, supplies, equipment and other general operating expenses. The Water Quality Section's authorized budget, excluding pass-through grants and aid, for the 1997-98 fiscal year is approximately $14.5 million. This aggregate amount is consistent with the Division's calculation of a "healthy budget." However, salary and fringes for personnel in the Water Quality Section account for over 80% of the total budget. According to the Division, additional operating support is needed by the Water Quality Section to carry out their statutory obligations. As such additional revenue resulting from fee increases proposed in this bill will be used primarily for operating expenses.

Part III of this bill revises the schedule of fees for water quality permits for non-animal facilities, animal waste management systems, and certification and training requirements. The new fee schedule is also being codified in the general statutes. The bill also provides that revenue generated by animal waste operations be credited to the Water and Air Quality Account, rather than the General Fund as required by current law.

The differences in the current permit fees (at the maximum compliance level) and the permit fees proposed in the legislation are shown in the chart below. The number of facilities in each category was provided by the Division of Water Quality, and shows the number of each type of non-animal facility permitted in 1998. The Division assumes that the number of facilities in each non-animal category will remain relatively constant over time. The numbers given for animal waste management facilities represent the number of operations expected to be permitted annually, once all facilities are in the permitting system. The Division began permitting animal waste systems in January 1997 and plan to have all systems permitted by January 2002. The number of facilities, and the associated revenue streams, are then expected to remain relatively constant over time.

Activity	# of Facilities	Current Fees (compliance maximums)	Proposed Fees
Category A (subject to annual fees)			
Major Individual NPDES Permits	250	$1,125	$2,865
Minor Individual NPDES Permits	1,470	600	715
Single Family Residences	1,095	48	50
Stormwater & Wastewater Discharge			
General Permits	3,000	80	80
Recycle Systems	170	300	300
Major Nondischarge Permits	301	1,000	1,090
Minor Nondischarge Permits	334	600	675
Animal Waste Management			
Animal Permits (Small Operations)	295	$50	$50
Animal Permits (Medium Operations)	2106	100	150
Animal Permits (Large Operations)	565	200	300

Category B (subject to project and annual)			
Major Consent Special Orders	15	0	$500
Minor Consent Special Orders	65	0	250
	45	400	400
Category C (application fees)			
Sewer Extensions	1000	$400	$400
State Stormwater	450	385	420
Water Quality Certifications - Major	375	0	475
Water Quality Certifications - Minor	375	0	200
Petroleum Contaminated Soils	30	400	400

Fee Change: Non-Animal Facilities: The change in Water Quality permit fees will alter revenue to the Division of Water Quality beginning in FY 1998-99. Using the above permit fees, and excluding the animal facilities, the total revenue generated from fees addressed in the bill will be approximately $1.8 million in 1998-99. (This represents 6 months of the fiscal year. The annual total, as shown below, is $3.6 million.). Because the statute sets the fees, and the number of facilities is constant, the revenue associated with non-animal facilities is expected to remain constant over time.

Category	**Revenue Under Bill**
Category A - Subject to Annual Fees (Does not include animal permits in this category).	$2,666,590
Category B - Subject to Project and Annual Fees.	$41,750
Category C - Application Fees.	$854,125
TOTAL NON-ANIMAL FEES	$3,562,465

In FY 1997-98 water quality permits are expected to generate $2.8 million in revenues. The three year average revenue collected from water quality permits is $2.9 million. This three year average is used as an approximation for future years. The Division believes that there will be no growth in non-animal permits in future years. Because of the effective date of the legislation, one-half of the three year average amount ($1.45 million) is used to estimate the net revenue increase for FY 1998-99. As such, the net revenue gain associated with non-animal permits is estimated at $350,000 in FY 1998-99, and $700,000 in succeeding years. Under current law, non-animal system permit fees are placed in a special non-reverting Water and Air Quality Account within DENR.

Fee Change: Animal Facilities: The Division of Water Quality began permitting animal waste management facilities January 1997. The Division assumes that all animal waste systems will be "on line," paying annual permit fees, by January 2002. As such, approximately 20% of the total number of facilities (and their revenue) will be added each year. Because the legislation instructs the Division to permit the largest facilities first, and larger operations are required to pay higher

fees, revenue growth slows as additional facilities are phased in each year. This note assumes calendar year revenue additions will be as follows: 23% in 1997, 22% in 1998, 20% in 1999, 20% in 2000, and 15% in 2001. After January 2002 the revenue is expected to remain constant under both the current system and the bill. Once 100% of the animal facilities are permitted, the bill will result in $161,800 of additional revenue, when compared to the existing fee structure. In the interim years an adjustment is made to convert the calendar year figures to fiscal year estimates. The bill requires these funds to be credited to the non-reverting Water and Air Quality Account.

Actual	Current	Proposed	Change
FY 1996-7	$ 38,910	$ 57,517	$ 18,607
FY 1997-8	$ 115,039	$ 170,051	$ 55,012
FY 1998-9	$ 186,093	$ 275,083	$ 88,990
FY 1999-0	$ 253,763	$ 375,113	$ 121,350
FY 2000-1	$ 312,974	$ 462,639	$ 149,665
FY 2001-2	$ 338,350	$ 500,150	$ 161,800
FY 2002-3	$ 338,350	$ 500,150	$ 161,800

Training and Certification: Currently the Division of Water Quality offers a number of training and certification programs, and charges a fee for their efforts. The working group recommended that the fees associated with these training and certification activities be increased. The Division provided a 1998-99 estimate of the number of operators. The number of certification and training participants was then increased annually by the forecasted population growth rate (approximately 1%) to reflect expected growth in the program. The 1998-99 revenue projections for training and certification are as follows:

Fee Type	**Existing Fee**	**Current Revenue**	**Proposed Fee**	**Proposed Revenue**	**Change**
Examination Fees (non-animal)	$75	$237,300	$85	$268,940	$31,640
Examination Fees (animal)	$10	$5,000	$25	$12,500	$7,500
Renewal Fees (non-animal)	$30	$242,430	$35	$282,835	$40,405
Renewal Fees (non-animal)	$10	$35,000	$10	$35,000	-
TOTAL		$519,730		$599,275	$79,545

One-half of the $79,545 is actually cited in the fiscal chart, as a result of the January effective date. These funds are credited to the non-reverting Water System Contract Account in the Department.

NOTE: Under current law revenue from animal waste system permits is credited to the General Fund. This bill revises the current practice by directing that the revenue be credited to the Water and Air Quality Account. This change will result in a revenue loss to the General Fund. The estimated reduction in General Fund revenue, as presented in this note, is based on the existing fee schedule, not the revised schedule being proposed. As mentioned above, the Division assumes that future permit revenue will remain constant since they do not expect significant changes at the federal level. However, it should be noted that any change in federal regulations will have an impact on North Carolina water quality permit revenue. These federal changes, in past years, have created a positive growth trend in permit revenue.

Part IV: Court Fees (G.S. 7A-304(a))

This part of the bill first amends G.S. 7A-304(a) by increasing the following fees in criminal court cases: 1) arrest and processing service fee from $5 to $10; 2) district court facilities fee from $6 to $12; and 3) superior court facilities fee from $24 to $30. Process and facilities fees for criminal cases are remitted directly to counties and municipalities for court related expenses.

Section 15: Criminal Cases (G.S. 7A-304(a)

This section of the bill increases service and facilities fees associated with criminal court fees. For the criminal service fee, Judicial Department data for FY 1996-97 indicates that there were 1,600,808 total cases involving processing service fees. Of these 1,600,808 cases, an estimated 1,120,566, or 70%, were criminal cases subject to this provision. Raising this service fee from $5 to $10 would have increased revenues by $5,602,830 in FY 1996-97. Extrapolating to future years using a conservative estimate of 2% growth in new criminal cases per year, we project the following annual revenue increases by raising district and superior court service fees:

FY 1998-99*	1,165,837 cases	$5,829,183
FY 1999-00	1,189,154 cases	$5,945,769
FY 2000-01	1,212,937 cases	$6,064,685
FY 2001-02	1,237,196 cases	$6,185,979
FY 2002-03	1,261,940 cases	$6,309,700

***Since effective date is November 1, 1998, the actual revenue increase for FY 1998-99 would be $3,886,122.**

For the criminal facilities fee, Judicial Department data for FY 1996-97 indicates that there were 997,017 criminal cases in district courts and 18,526 criminal cases in superior courts (1,015,543 total cases). Raising the district court facilities fee from $6 to $12 would have increased revenues by $5,982,102, while raising the superior court facilities fee from $24 to $30 would have increased revenues by $111,156. The total revenues gained by increasing the facilities fees would have been $6,093,258. Extrapolating to future years using a conservative estimate of 2% growth in new criminal cases per year, we project the following annual revenue increases from raising the district and superior court facilities fees:

FY 1998-99*	1,056,571 cases	$6,339,426
FY 1999-00	1,077,702 cases	$6,466,212
FY 2000-01	1,099,256 cases	$6,595,536
FY 2001-02	1,121,241 cases	$6,727,447
FY 2002-03	1,143,666 cases	$6,861,994

***Since effective date is November 1, 1998, the actual revenue increase for FY 1998-99 would be $4,226,284.**

Section 16 - Civil Cases G.S. 7A-305(a)

Section 16 raises the service and facilities fees associated with civil actions[1]. For the civil service fees, as indicated earlier, there were a total of 1,600,808 cases that involved processing service fees in FY 1996-97. Of these 1,600,808 cases, an estimated 428,746 cases, or 26%, were civil actions or special proceedings subject to this section. Raising the service fee from $5 to $10 would have increased revenues by $2,143,730 in FY 1996-97. Extrapolating to future years using a conservative estimate of 2% growth in new civil actions and per year, we project the following annual revenue increases from raising civil service fees:

FY 1998-99*	446,067 cases	$2,230,337
FY 1999-00	454,988 cases	$2,274,942
FY 2000-01	464,088 cases	$2,320,439
FY 2001-02	473,370 cases	$2,366,849
FY 2002-03	482,837 cases	$2,414,187

***Since effective date is October 1, 1998, the actual revenue increase for FY 1998-99 would be $1,486,890.**

For the civil and estates facilities fees, Judicial Department data for FY 1996-97 indicated that there were 271,994 civil cases heard before a magistrate, 105,389 cases in district court and 21,807 cases in superior court, 29,106 special proceedings, and 56,952 estates cases (485,248 total cases). Raising the magistrate facilities fee from $6 to $12 would have increased revenues by $1,631,964, while raising the district and superior facilities fee for civil cases from $10 to $16 would have increased revenues by a combined $765,876 ($635,034 from district court and $130,842 from superior). Raising the special proceedings and estates facilities fees from $4 to $10 would bring in an additional $516,348 ($174,636 from special proceedings and $341,712 from estates cases). The total revenues gained by increasing the facilities fees would have been $2,914,188. Extrapolating this revenue increase to future years using a conservative estimate of 2% growth in new civil actions and estates cases, we project the following revenue increases from raising the civil and estates facilities fees:

[1] Civil actions are defined here as civil cases before a magistrate or in district or superior court, and special proceedings.

FY 1998-99*	504,852 cases	$3,029,112
FY 1999-00	514,949 cases	$3,089,694
FY 2000-01	525,248 cases	$3,151,488
FY 2001-02	535,753 cases	$3,214,518
FY 2002-03	546,468 cases	$3,278,808

***Since effective date is October 1, 1998, the actual revenue increase for FY 1998-99 would be $2,019,408.**

SOURCES OF DATA: Judicial Department

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Ramona Burton, Linda Millsaps, Mona Moon, Dwayne Pinkney, Charles Perusse, and Richard Bostic.

DATE: September 1, 1998

EXPLANATION OF SENATE BILL 1199:
House Finance Committee Substitute
Increase Various Fees

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: September 2, 1998
SPONSOR: Senator Kerr

The House Finance committee substitute for Senate Bill 1199 makes the following changes to the bill:

- It lowers the insurance regulatory charge from 6.5% to 6%. This is the rate the Committee adopted when it gave House Bill 1429, which also set the 1998 insurance regulatory fee, a favorable report. It also adds a provision that ensures the regulatory charge will be based upon gross premium tax collections.
- It adds the provisions of House Bill 1544 to the bill. House Bill 1544 increases the court fees payable to local governments. The House passed this bill on July 16, 1998. It is in the Senate Finance Committee.
- It makes a couple of conforming changes to G.S. 78A-28 and 78A-31, as requested by the Secretary of State's Office.
- Lastly, it delays the effective date of the bill from July 1, 1998, to November 1, 1998.

Part I. Secretary of State Fee Increases

Sections 1 through 5 of the bill contain the fee increases applicable to the Office of the Secretary of State. The revenue generated by these fee increases is credited to the General Fund. These fees become effective November 1, 1998.

- It increases the fee imposed to be commissioned or recommissioned as a notary public from $25 to $30. A commission must be renewed every five years.
- It converts the volume-based registration fee imposed on companies that sell investment securities and mutual funds to North Carolina investors to a flat $2,000 registration fee. The current volume-based registration fee is 1/10 of 1% of the maximum aggregate offering price, not to exceed $1,600.
- It authorizes the Secretary of State to charge a fee for fairness hearings. The amount of the fee is to be based upon the time and expenses incurred by the Secretary's staff. The fee may not be less than $500, nor more than $5,000.

  When securities are being exchanged, as opposed to purchased, a

corporation may request the Securities Division to conduct a "fairness hearing" to determine whether the exchange rates and values are fair. A fairness hearing conducted by the Securities Division exempts the corporation from having to register with the SEC – which is a very costly and time-consuming process.

The Director of the Securities Division conducts between 30 and 35 hearings annually. It takes a minimum of 5-6 hours to a maximum of 18-20 hours to prepare for and conduct a hearing and to generate a post-hearing Order. The Secretary recommends assessing a flat $500 fee for all hearings, and $200 per hour for all staff time devoted to a hearing in excess of 5 hours, not to exceed a maximum of $5,000.

- It increases the fee for authenticating documents from $6.25 to $10.

Part II. Autopsy Fees

Section 6 increases the fee that may be charged for an autopsy by private contracted pathologists and the medical institutions from $400 to $1,000, effective for autopsies performed on or after November 1, 1998. An autopsy must be performed when a medical examiner, a district attorney, or a superior court judge decides that one is necessary. The cost of performing the autopsy is borne by the State unless the decedent is a resident of the county in which the death or fatal accident occurred. In that instance, the county pays the cost of the autopsy.

Of the 3,570 autopsies performed each year, approximately 2,010 are performed by private contracted pathologists and the remaining 1,560 are performed by the State through the Office of the Chief Medical Examiner in Chapel Hill and the Mecklenburg County Office. The State pays private contracted pathologists to perform 402 autopsies a year. However, the counties pay the State to perform 1,008 autopsies a year.

Part III. Water Qualify Fees

Sections 7 through 14 of the bill codify all of the existing fees related to water quality and increases many of them to accomplish two goals: To achieve greater equity among the groups that pay the fees and to maintain the goal of generating 30% of the program's costs through fees. The remaining 70% of the program's costs are funded through General Fund appropriations and federal monies. There is a separate handout that more fully explains this Part of the bill. These fees become effective January 1, 1999.

Part IV. Increase Court Fees

Sections 15 through 19 of the bill increase the court fees that are payable to the municipalities and counties to assist them in covering the costs of maintaining

judicial facilities. The bill is supported by the Association of County Commissioners and requested by several counties. The current fees cover 15% or less of the counties' and municipalities' costs of maintaining the judicial facilities. This Part of the bill becomes effective November 1, 1998, and applies to fees assessed or paid on or after that date.

Sections 15 and 19 of the bill increase the fee for service of criminal and civil processes from $5 to $10. These fees were last increased from $4 to $5 in 1990. The fees are remitted to the county where the process was served except in those cases in which the process was served by a municipal law enforcement officer. In those cases, the fee is payable to the municipality. Although there is not a requirement that the revenue from this fee be used for law enforcement, most local governments, if not all, dedicate the revenue to law enforcement.

Sections 15, 16, 17, and 18 of the bill increase the facilities fee by $6. These fees were last increased from $5 to $6 in 1992. Funds derived from the facilities fees must be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities. If the funds derived from the facilities fees exceed what is needed for this purpose, a county or municipality may, with the approval of the Administrative Office of the Courts, use the excess funds to retire outstanding indebtedness incurred in the construction of judicial facilities, to reimburse the county or municipality for renovations made to the facilities within the past two years, or to supplement the operations of the judicial system in the county.

The specific increased fee amounts are as follows:

1.	Magistrate, criminal cases:	$12
2.	District Court, criminal cases:	$12
3.	Superior Court, criminal cases:	$30
4.	Magistrate, civil cases:	$12
5.	District Court, civil cases:	$16
6.	Superior Court, civil cases:	$16
7.	Superior Court, special proceedings:	$10
8.	Administration of estates, etc.:	$10

Part V. Set Public Utility Regulatory Fee

Section 20 of the bill sets the public utility regulatory fee for fiscal year 1998-99 at 0.09%. This rate maintains the current 0.09% rate set in fiscal year 1997-98. The utility regulatory fee was imposed in 1989. Its purpose is to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional

revenues. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

Part VI. Set Insurance Regulatory Fee

Section 21 decreases the insurance regulatory charge from 8.75% to 6%. This charge was first imposed in 1991. Its purpose is to make the Department of Insurance receipt-supported and thereby eliminate General Fund support of the Department. The regulatory charge is imposed on insurance companies that pay the gross premiums tax, other than service corporations such as Blue Cross/Blue Shield and Delta Dental Corporation. Health maintenance organizations do not pay the regulatory charge because they do not pay the gross premiums tax. The charge is a percentage of the insurance company's premiums tax liability.

Last year, the General Assembly clarified that the premiums tax liability upon which the charge is levied is not reduced by any tax credits allowed a taxpayer for guaranty or solvency fund assessments. This change explains in part the reason why the charge is able to be decreased this fiscal year by 2.75%. Section 22 ensures that the regulatory charge will continue to be based upon gross premium tax collections by providing that the premium tax liability upon which the charge is levied is not reduced by any tax credits allowed a taxpayer under Chapter 105. The Economic Opportunity Act of 1989, passed earlier this session by the General Assembly, allows a tax credit against the gross premiums tax for investing in central administrative office property.

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Memorandum

September 2, 1998

TO: House Committee on Finance

FROM: George F. Givens, Counsel to the Environmental Review Commission
Jeff Hudson, Counsel to the Environmental Review Commission

SUBJECT: **Part III (Water Quality Fees), Proposed House Committee Substitute for Senate Bill 1199 (Increase Various Fees)**

History/Background

Funding for water quality programs within the Department of Environment and Natural Resources (DENR) has been historically supported by three main sources: federal monies, State General Fund appropriations, and permit fee receipts. In 1996, the Water Quality Section of DENR delivered a presentation to the Environmental Review Commission (ERC) projecting a shortfall in the funding of its water quality programs. The Water Quality Section proposed that the General Assembly increase both the percentage and dollar amount limits on the water quality permit fees established by rules adopted by the Environmental Management Commission. At that time, however, there was no consensus among the interested parties in support of this proposal.

In early 1997, the ERC established a stakeholder working group, the Water Quality Programs Funding Working Group (Working Group), to evaluate the water quality programs within DENR and to develop recommendations on a long-term strategy for funding. The Working Group consisted of 15 members representing business and industry, agriculture, local governments, the conservation community, and economic development interests (see next section for complete membership list). The Working Group held ten meetings over a thirteen month period. The Working Group's efforts culminated in an April 27, 1998 presentation to the ERC.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

The Working Group recommended to the ERC that fees related to the water quality programs be codified in the North Carolina General Statutes. Currently, some of the water quality program fees are established by rule of the Environmental Management Commission, while others are set out in the General Statutes. Codifying all of the fees in the General Statutes would remove the authority of the Environmental Management Commission to set fees related to the water quality programs. The fee structure recommended to the ERC by the Working Group had two main goals: to continue to fund 30% of the water quality program budget through permit fees and to establish a greater degree of proportionality between the fee for a specific permit and the time and effort that DENR must expend in processing permit applications and in enforcing permit conditions governing the activity for which the permit was issued (i.e. the more time/effort DENR must expend to process and enforce a permit, the greater the permit fee).

Pursuant to the Working Group's recommendations, the ERC recommended two companion bills to codify the fee structure proposed by the Working Group, House Bill 1484 (Water Quality Fees), introduced by Representative Frank Mitchell in the House of Representatives, and Senate Bill 1330, introduced in the Senate by Senator Fountain Odom. Senate Bill 1330 was referred to the Senate Finance Committee where it was incorporated into a Senate Finance Committee Substitute for Senate Bill 1199 (Set Regul. Fees/Increase Various Fees).

Membership of Water Quality Program Funding Workgroup

Workgroup member organizations that support the proposed fee structure

Environmental Management Commission	Jeff Morse, Chair
North Carolina Citizens for Business and Industry	Jim Kuszaj
Manufacturers and Chemical Industry Council	George Everett
North Carolina Home Builders Association	Paul Wilms
North Carolina Economic Developers Association	Paul Lawler
North Carolina Wildlife Federation	Tom Bean
North Carolina Environmental Defense Fund	Joe Rudek
North Carolina Farm Bureau Federation	Paula Gupton
North Carolina Aggregates Association	Fred Allen
North Carolina League of Municipalities	Paula Thomas
North Carolina Association of County Commissioners	Ed Regan
Division of Water Quality, DENR	Preston Howard

Workgroup member organization that did not support the proposed fee structure

North Carolina Pork Producers Association	Jerry Hardesty

Section 7 codifies a new fee structure under G.S. 143-215.3D.

G.S. 143-215.3D(a). Annual Fees for discharge and nondischarge permits under G.S. 143-215.1.

Activity/Permit	Current Annual Fee	Annual Fee in SB 1199
Major Individual NPDES Permits	$900.00 -- $1,500.00	$2,865
Minor Individual NPDES Permits	$450.00 -- $800.00	$715.00
Single Family Residences	$48.00	$50.00
Stormwater and Wastewater Discharge General Permits	$80.00	$80.00
Recycle Systems	$225.00 -- $300.00	$300.00
Major Nondischarge Permits	$450.00 -- $1,500	$1,090
Minor Nondischarge Permits	$300.00 -- $600.00	$675.00

G.S. 143-215.3D(b) requires an applicant for a permit listed under G.S. 143-215.3D(a) *(listed above)* to pay a non-refundable application fee equal to the annual fee for the permit. If the permit is issued, the initial application fee will be applied as the annual fee for the first year. If the application is denied, the application fee will not be refunded.

G.S. 143-215.3D(c). Annual fees for consent special orders under G.S. 143-215.2.

Activity/Permit	Current Fee	Fees in SB 1199	
		Initial Project Fee	Annual Fee
Major Consent Special Orders	$400.00	$400.00	$500.00
Minor Consent Special Orders	$400.00	$400.00	$250.00

G.S. 143-215.3D(d) requires an applicant for a major modification of a permit listed under G.S. 143-215.3D(a) *(listed above)* to pay a non-refundable application fee equal to 30% of the annual fee for the permit. A major modification is any modification that would allow an increase in the volume or pollutant load of the discharge or nondischarge or that would result in a significant relocation of the point of discharge. If the application for a major modification is denied, the application fee will not be refunded.

G.S. 143-215.3D(e). Other Fees under Article 21 of Chapter 143.

Activity/Permit	Current Fee	Fee in SB 1199
Sewer System Extension Permits	$200.00 -- $400.00	$400.00
State Stormwater Permits	$50.00 -- $385.00	$420.00
Major Water Quality Certifications	0	$475.00
Minor Water Quality Certifications	0	$200.00
Land Application of Petroleum Contaminated Soils Permit	$200.00 -- $400.00	$400.00

If an application for a permit or a certification under this subsection is denied, the application or certification fee will not be refunded.

Sections 8 and 9 make technical and conforming changes.

Section 10 amends G.S. 143-215.310G.

G.S. 143-215.10G(a). Fees for animal waste management system permits.

Activity/Permit	Current Annual Fee	Annual Fee in SB 1199
Animal Waste Management System Permit for Small Operations (system with a design capacity of between 38,500 and 99,999 pounds steady state live weight)	$50.00	$50.00
Animal Waste Management System Permit for Medium Operations (system with a design capacity of between 100,000 and 799,999 pounds steady state live weight)	$100.00	$150.00
Animal Waste Management System Permit for Large Operations (system with a design capacity of 800,000 pounds steady state live weight or more)	$200.00	$300.00

G.S. 143-215.10G(b) requires an applicant for a new permit under G.S. 143-215.10G *(listed above)* to pay a non-refundable application fee equal to the annual fee for the permit. If the permit is issued, the initial application fee will be applied as the annual fee for the first year. If the application is denied, the application fee will not be refunded.

G.S. 143-215.10G(c) provides that fees collected pursuant to G.S. 143-215.10G will be credited to the Water and Air Quality Account and directs DENR to use these fees to cover the costs of administering the animal waste management system permitting and inspection program.

Sections 11 and 12 amend G.S. 90A-42(a) and G.S. 90A-47(a). Fees for examination and certification of water pollution control system operators and animal waste management system operators.

Activity/Permit	Current Fee	Fee in SB 1199
Examination, Including Certificate, for Water Pollution Control System Operators	$75.00	$85.00
Annual Renewal of Water Pollution Control System Operator Certificate	$30.00	$35.00
Examination, Including Certificate, for Animal Waste Management System Operators	$10.00	$25.00

Section 13 repeals the provision that credits animal waste management system permit fees to the General Fund as nontax revenue and prohibits DENR from using these permit fees to cover the costs of the animal waste management system permit program.

Section 14 explains that nothing in this act is to be construed to relieve any person of the obligation to any fee described in this act under the fee schedule in effect prior to the date this act becomes effective.

Section 20 makes Part III of this act effective January 1, 1999.

ROLL CALL VOTE

11 YES 22 NO = _____(TOTAL) HB# _____ SB# 1199

HOUSE STANDING COMMITTEE ON _____

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
___	___	ALLRED	✓	___	HIGHTOWER
___	✓	ARNOLD	___	___	JARRELL
✓	___	BADDOUR	___	___	LUEBKE
___	✓	BEALL	___	✓	MCCOMAS
___	✓	BERRY	___	✓	MCCOMBS
✓	___	BOYD-MCINTYRE	___	✓	MCMAHAN
___	✓	BROWN	___	___	MERCER
___	✓	BUCHANAN	___	___	MILLER
___	✓	CAPPS	___	___	MINER
___	___	CARPENTER	___	___	MORGAN
___	___	COLE	___	✓	MORRIS
___	___	CRAWFORD	___	___	NEELY
✓	___	CUNNINGHAM	___	___	NESBITT
___	___	DECKER	___	___	NICHOLS
✓	___	DEDMON	___	✓	RAMSEY
___	✓	EDDINS	___	✓	RAYFIELD
___	___	FITCH	___	✓	RUSSELL
✓	___	~~GAMBLE~~ B	___	✓	STARNES
✓	___	GOODWIN	___	✓	TALLENT
✓	___	HACKNEY	___	___	WOMBLE
✓	___	HENSLEY	✓	___	WRIGHT
___	✓	HILL	___	___	
___	✓	HOWARD	___	___	
✓	___	~~HUNTER~~ Bryant	___	___	

___	___	**CHAIRMEN**		
___	✓	GRAY	___	___
___	✓	BRAWLEY	___	___
___	✓	DICKSON	___	___
___	✓	WILSON, C.	___	___
___	___		___	___
___	___		Ex officio Members	
___	___		___	___ Speaker Pro TemWOOD
___	___		___	___ Majority LeaderDAUGHTRY
___	___		___	___ Majority Whip

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 9-2-98

S. B. No. 1199 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page ~~20~~ 21, line 38

(✓) WHICH CHANGES THE TITLE

~~by~~ through page 27, line 32, by deleting Part ~~III~~ IV;

~~On page 28, lines 31 - 32 by deleting "PART V of this act becomes effective~~

on page 28, line 27 by deleting "PARTS I, II, and IV;" and substituting "PARTS I and II";

and on page 28, lines 29-30, by putting a period after "1998" and deleting the remainder of that sentence;

and on page 1, lines 6-7, by deleting: "TO INCREASE THE PROCESS AND FACILITIES FEES IN THE GENERAL COURT OF JUSTICE,".

SIGNED _____

ADOPTED _____ FAILED X TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1199*
Finance Committee Substitute Adopted 6/25/98
House Committee Substitute Favorable 8/10/98
Proposed House Committee Substitute S1199-PCSX9613-RB

Short Title: Increase Various Fees/Set Reg. Fees. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO INCREASE VARIOUS FEES, TO ESTABLISH A FEE FOR FAIRNESS HEARING CONDUCTED BY THE OFFICE OF THE SECRETARY OF STATE, TO INCREASE THE AUTOPSY FEE, TO REVISE AND PLACE INTO THE GENERAL STATUTES THE SCHEDULE OF FEES FOR PERMITS UNDER THE WATER QUALITY PROGRAM, TO INCREASE THE PROCESS AND FACILITIES FEES IN THE GENERAL COURT OF JUSTICE, TO SET THE PUBLIC UTILITY REGULATORY FEE, AND TO SET THE INSURANCE REGULATORY CHARGE.

The General Assembly of North Carolina enacts:

PART I. SECRETARY OF STATE FEES

Section 1. G.S. 10A-7 reads as rewritten:

"**§ 10A-7. Fee with commission application.**

Every applicant for a notarial commission shall pay to this State a nonrefundable fee of ~~twenty-five dollars ($25.00).~~ thirty dollars ($30.00). Every applicant for recommissioning shall pay to this State a nonrefundable fee of ~~twenty-five dollars ($25.00).~~ thirty dollars ($30.00)."

Section 2. G.S. 78A-28 reads as rewritten:

"**§ 78A-28. Provisions applicable to registration generally.**

(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered dealer.

(b) Every person filing a registration statement shall pay a filing fee of ~~one hundred dollars ($100.00), plus a registration fee of one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at which the registered securities are to be offered in this State, but the registration fee may not be less than twenty-five dollars ($25.00) nor more than one thousand five hundred dollars ($1,500).~~ two thousand dollars ($2,000). When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under G.S. 78A-29, the Administrator shall retain the filing fee. A registration statement relating to ~~securities issued or to be issued by a mutual fund, open-end management company, or unit investment trust or relating to other~~ redeemable securities, other than a security covered under federal law, to be offered for a period in excess of one year, must be renewed annually by payment of a renewal fee of one hundred dollars ($100.00) and by filing any documents or reports that the Administrator may by rule or order require.

(c) Every registration statement shall specify (i) the amount of securities to be offered in this State; (ii) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and (iii) any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) Any document filed under this Chapter or a predecessor law within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The Administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) In the case of a nonissuer distribution, information may not be required under G.S. 78A-27 or 78A-28(i) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g) The Administrator may by rule or order require as a condition of registration by qualification or coordination (i) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (ii) that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the securities either in this State or elsewhere. The Administrator may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(h) Except during the time a stop order is in effect under G.S. 78A- 29, a registration statement relating to ~~securities issued or to be issued by a mutual fund, open-end management company, or unit investment trust or relating to other~~ redeemable securities, other than a security covered under federal law, to be offered for a period in excess of one year, expires on December 31 of each year or some

other date not more than one year from its effective date as the Administrator may by rule or order provide. Every other registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under G.S. 78A-29. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (i) so long as the registration statement is effective and (ii) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under G.S. 78A-29 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the Administrator.

(i) So long as a registration statement is effective, the Administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose progress of the offering.

(j) A registration statement filed in accordance with subsection (b) of this section may be amended after its effective date to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the Administrator so orders. Every person filing such an amendment shall pay a ~~registration fee calculated in the manner specified in subsection (b) and a~~ filing fee of fifty dollars ($50.00) with respect to the additional securities proposed to be offered."

Section 3. G.S. 78A-30 is amended by adding a new subsection to read:

"(g) The Administrator shall charge a fee for a fairness hearing that the Administrator holds under this section. The Administrator shall set the fee based upon the time and expenses incurred by the Administrator. The fee may not be less than five hundred dollars ($500.00), and it may not exceed five thousand dollars ($5,000)."

Section 4. G.S. 78A-31(a) reads as rewritten:

"(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

(1) Prior to the initial offer of the security in this State, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, together with a consent to service of process signed by the issuer and with the payment of a notice filing fee of ~~one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at~~

~~which the securities covered under federal law are to be offered in this State, but the notice filing fee shall not be less than twenty-five dollars ($25.00) or more than one thousand six hundred dollars ($1,600).~~ two thousand dollars ($2,000).

(2) After the initial offer of the security in this State, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, which shall be filed concurrently with the Administrator.

(3) A report of the value of securities covered under federal law that are offered or sold in this State.

(4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee of one hundred dollars ($100.00) and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period.

(5) A notice filed in accordance with this section may be amended after its effective date to increase the securities specified as proposed to be offered. An amendment becomes effective upon receipt by the Administrator. Every person submitting an amended notice filing shall pay ~~a fee calculated in the manner specified in subdivision (1) of this subsection and~~ a filing fee of fifty dollars ($50.00) with respect to the additional securities proposed to be offered."

Section 5. G.S. 147-37 reads as rewritten:

"**§ 147-37. Secretary of State; fees to be collected.**

When no other charge is provided by law, the Secretary of State shall collect such fees for copying any document or record on file in his office which in his discretion bears a reasonable relation to the quantity of copies supplied and the cost of purchasing or leasing and maintaining copying equipment. These fees may be changed from time to time, but a schedule of fees shall be available on request at all times. In addition to copying charges, the Secretary of State shall collect a fee of ~~six dollars and twenty-five cents ($6.25)~~ ten dollars ($10.00) for certifying any document or record on file in his office or for issuing any certificate as to the facts shown by the records on file in his office."

PART II. INCREASE AUTOPSY FEE

Section 6. G.S. 130A-389(a) reads as rewritten:

"(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge. A copy of the report shall be furnished to other persons upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be ~~four hundred dollars ($400.00).~~ one thousand dollars ($1,000)."

PART III. WATER QUALITY FEES

Section 7. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.3D. Fee schedule for water quality permits.**

(a) Annual fees for discharge and nondischarge permits under G.S. 143-215.1. --

(1) Major Individual NPDES Permits. -- The annual fee for an individual permit for a point source discharge of 1,000,000 or more gallons per day, a publically owned treatment works (POTW) that administers a POTW pretreatment program, as defined in 40 Code of Federal Regulations § 403.3 (1 July 1996 Edition), or an industrial waste treatment works that has a high toxic pollutant potential shall be two thousand eight hundred sixty-five dollars ($2,865).

(2) Minor Individual NPDES Permits. -- The annual fee for an individual permit for a point source discharge other than a point source discharge to which subdivision (1) of this subsection applies shall be seven hundred fifteen dollars ($715.00).

(3) Single-Family Residence. -- The annual fee for a certificate of coverage under a general permit for a point source discharge or an individual nondischarge permit from a single-family residence shall be fifty dollars ($50.00).

(4) Stormwater and Wastewater Discharge General Permits. -- The annual fee for a certificate of coverage under a general permit for a point source discharge of stormwater or wastewater shall be eighty dollars ($80.00).

(5) Recycle Systems. -- The annual fee for an individual permit for a recycle system nondischarge permit shall be three hundred dollars ($300.00).

(6) Major Nondischarge Permits. -- The annual fee for an individual permit for a nondischarge of 10,000 or more gallons per day or

requiring 300 or more acres of land shall be one thousand ninety dollars ($1,090).

(7) Minor Nondischarge Permits. -- The annual fee for an individual permit for a nondischarge of less than 10,000 gallons per day or requiring less than 300 acres of land shall be six hundred seventy-five dollars ($675.00).

(8) Animal Waste Management Systems. -- The annual fee for animal waste management systems shall be as set out in G.S. 143-215.10G.

(b) Application fee for new discharge and nondischarge permits. -- An application for a new permit of the type set out in subsection (a) of this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee will be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Application and annual fees for consent special orders. --

(1) Major consent special orders. -- If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (1) or (6) of subsection (a) of this section, the initial project fee shall be four hundred dollars ($400.00) and the annual fee shall be five hundred dollars ($500.00). These fees shall be in addition to the annual fee due under subsection (a) of this section.

(2) Minor consent special orders. -- If the Commission enters into a consent special order, assurance of voluntary compliance, or similar document pursuant to G.S. 143-215.2 for an activity subject to an annual fee under subdivision (2) or (7) of subsection (a) of this section, the initial project fee shall be four hundred dollars ($400.00) and the annual fee shall be two hundred fifty dollars ($250.00). These fees shall be in addition to the annual fee due under subsection (a) of this section.

(d) Fee for major permit modifications. -- An application for a major modification of a permit of the type set out in subsection (a) of this section shall be accompanied by an application fee equal to thirty percent (30%) of the annual fee applicable to that permit. A major modification of a permit is any modification that would allow an increase in the volume or pollutant load of the discharge or nondischarge or that would result in a significant relocation of the point of discharge, as determined by the Commission. This fee shall be in addition to the fees due under subsections (a) and (c) of this section. If the application is denied, the application fee shall not be refunded.

(e) Other fees under this Article. --

(1) Sewer system extension permits. -- The application fee for a permit for the construction of a new sewer system or for the extension of an existing sewer system shall be four hundred dollars ($400.00).

(2) State stormwater permits. -- The application fee for a permit regulating stormwater runoff under G.S. 143-214.7 and G.S. 143-215.1 shall be four hundred twenty dollars ($420.00).

(3) Major water quality certifications. -- The fee for a water quality certification involving one acre or more of wetland fill or 150 feet or more of stream impact shall be four hundred seventy-five dollars ($475.00).

(4) Minor water quality certifications. -- The fee for a water quality certification involving less than one acre of wetland fill or less than 150 feet of stream impact shall be two hundred dollars ($200.00).

(5) Permit for land application of petroleum contaminated soils. -- The fee for a permit to apply petroleum contaminated soil to land shall be four hundred dollars ($400.00).

(6) Fee nonrefundable. -- If an application for a permit or a certification described in this subsection is denied, the application or certification fee shall not be refunded."

Section 8. G.S. 143-215.3(a) reads as rewritten:

"(a) Additional Powers. -- In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.

(1a) To ~~charge~~ adopt fee schedules and collect fees for the following:

a. Processing of applications for permits or registrations issued under ~~Articles~~ Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter;

b. Administering permits or registrations issued under ~~Articles~~ Article 21, other than Parts 1 and 1A, Articles 21A, 21B, ~~or~~ and 38 of this Chapter including monitoring compliance with the terms of those permits; and

c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.

No fee may be charged under this provision, however, to a farmer who submits an application that pertains to his farming operations.

(1b) ~~The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.1 of Article 21 may not exceed four hundred dollars ($400.00).~~ The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars ($500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars

($50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under ~~G.S. 143-215.1 of Article 21~~ Article 21, other than Parts 1 and 1A, and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars ($1,500) per year. Fees for processing all permits under Article 21A and all other sections of ~~Articles 21 and~~ Article 21B shall not exceed one hundred dollars ($100.00) for any single permit. ~~Notwithstanding any other provision of this subdivision, the~~ The total payment for fees ~~required~~ that are set by the Commission under this subsection for all permits ~~under this subsection~~ for any single facility shall not exceed seven thousand five hundred dollars ($7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for the renewal or amendment.

(1c) Moneys collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:

a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;
b. Improve the quality of permits issued;
c. Improve the rate of compliance of permitted activities with environmental standards; and

d. Decrease the length of the processing period for permit applications.

(1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.

a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be credited to the Title V Account.

b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.

c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.

(1e) The Commission shall collect the application, annual, and project fees for processing and administering permits, certificates of coverage under general permits, and certifications issued under Parts 1 and 1A of this Article and for compliance monitoring under Parts 1 and 1A of this Article as provided in G.S. 143-215.3D and G.S. 143-215.10G.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private,

for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article or by Article 21B of this Chapter.

(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.

(5) To institute such actions in the superior court of any county in which a violation of this Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this Article, Article 21B of this Chapter, or of any official action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Commission on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less

the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given in accordance with the provisions of G.S. 150B-21.2.

A person aggrieved by an order of the Commission under this subdivision may seek judicial review of the order under Article 4 of Chapter 150B of the General Statutes without first commencing a contested case. An order may not be stayed while it is being reviewed.

(9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to

G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require a laboratory facility that performs any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter to be certified annually by the Department, to establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be certified, and to charge a laboratory facility a fee for certification. Fees collected under this subdivision shall be credited to the Water and Air Account and used to administer this subdivision. These fees shall be applied to the cost of certifying commercial, industrial, and municipal laboratory facilities.

(11) Repealed by Session Laws 1983, c. 296, s. 6.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article or Article 21B of this Chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this subdivision shall apply.

(13) Repealed by Session Laws 1983, c. 296, s. 6.

(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143."

Section 9. G.S. 143-215.3A reads as rewritten:

"**§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.**

(a) The Water and Air Quality Account is established as a nonreverting account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. 105-449.125, 105-449.134, and 105-449.43 shall be used to administer the air quality program. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

(1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.

(2) Fees credited to the Title V Account.

(3) Fees credited to the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund under G.S. 143-215.3B.

(4) Fees collected under G.S. 143-215.28A.

(5) Fees collected under G.S. 143-215.94C shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a1) The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a), after deducting those monies collected under G.S. ~~143-215.3(A)(1d),~~ 143-215.3(a)(1d), shall not exceed thirty percent (30%) of the total budgets from all sources of environmental permitting and compliance programs within the Department. This subsection shall not be construed to relieve any person of the obligation to pay a fee established under this Article or Articles 21A, 21B, or 38 of this Chapter.

(b) The Title V Account is established as a nonreverting account within the Department. Revenue in the Account shall be used for developing and implementing a permit program that meets the requirements of Title V. The Title V Account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect costs required to develop and administer the Title V permit program, and fees collected under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V program. Expenses of the Air Quality Compliance Advisory Panel, the ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

(b1) The I & M Air Pollution Control Account is established as a nonreverting account within the Department. Fees transferred to the Division of Air Quality of the Department pursuant to G.S. 20-183.7(c)(2) shall be credited to the I & M Air Pollution Control Account and shall be applied to the costs of developing and implementing an air pollution control program for mobile sources.

(c) The Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the State's environmental permitting

programs contained within such Department. In addition, the Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the Title V program. The reports shall include, but are not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

Section 10. G.S. 143-215.10G reads as rewritten:

"**§ 143-215.10G. Fees for animal waste management systems.**

(a) Department shall charge an annual permit fee of all animal operations that are subject to a permit under G.S. 143-215.10C for animal waste management systems according to the following schedule:

(1) For a system with a design capacity of 38,500 or more and less than 100,000 pounds steady state live weight, fifty dollars ($50.00).

(2) For a system with a design capacity of 100,000 or more and less than 800,000 pounds steady state live weight, one hundred fifty dollars ~~($100.00).~~ ($150.00).

(3) For a system with a design capacity of 800,000 pounds or more steady state live weight, ~~two~~ three hundred dollars ~~($200.00).~~ ($300.00).

(b) An application for a new permit under this section shall be accompanied by an initial application fee equal to the annual fee for that permit. If a permit is issued, the application fee will be applied as the annual fee for the first year that the permit is in effect. If the application is denied, the application fee shall not be refunded.

(c) Fees collected under this section shall be credited to the Water and Air Quality Account. The Department shall use fees collected pursuant to this section to cover the costs of administering this Part."

Section 11. G.S. 90A-42(a) reads as rewritten:

"(a) The Commission, in establishing procedures for implementing the requirements of this Article, shall impose the following schedule of fees:

(1) Examination including Certificate, ~~$75.00;~~ $85.00;

(2) Temporary Certificate, $200.00;

(3) Temporary Certification Renewal, $300.00;

(4) Conditional Certificate, $75.00;

(5) Repealed by Session Laws 1987, c. 582, s. 3.

(6) Reciprocity Certificate, $100.00;

(6a) Voluntary Conversion Certificate, $50.00;

(7) Annual Renewal, ~~$30.00;~~ $35.00;

(8) Replacement of Certificate, $20.00;

(9) Late Payment of Annual Renewal, $50.00 penalty in addition to all current and past due annual renewal fees plus one hundred dollars ($100.00) penalty per year for each year for which annual renewal fees were not paid prior to the current year; and

(10) Mailing List Charges -- The Commission may provide mailing lists of certified water pollution control system operators and of water pollution control system operators to persons who request such lists. The charge for such lists shall be twenty-five dollars ($25.00) for each such list provided."

Section 12. G.S. 90A-47.4(a) reads as rewritten:

"(a) An applicant for certification under this Part shall pay a fee of ~~ten dollars ($10.00)~~ twenty-five dollars ($25.00) for the examination and the certificate."

Section 13. Subsection (d) of Section 27.13 of Chapter 18 of the 1995 Session Laws (1996 Second Extra Session) is repealed.

Section 14. This Part of this act shall not be construed to relieve any person of the obligation to pay any fee due for any activity described in this Part under the schedule of fees in effect prior to the date this Part becomes effective.

PART IV. INCREASE COURT FEES

Section 15. G.S. 7A-304(a) reads as rewritten:

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

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

(2) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve dollars ($12.00) in the district court, 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 ($15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

(6) For support of the General Court of Justice, for the issuance by the clerk of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2, the sum of fifty dollars ($50.00), to be remitted to the State Treasurer. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee."

Section 16. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve dollars ($12.00) in cases heard before a magistrate, and the sum of ~~ten dollars ($10.00)~~ sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which 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 in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of fifty-five dollars ($55.00) in the superior court, and the sum of forty dollars ($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 shall be remitted to the State Treasurer."

Section 17. G.S. 7A-306(a) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00)~~ ten dollars ($10.00) to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(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 shall be remitted to the State Treasurer."

Section 18. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00),~~ ten dollars ($10.00), to be remitted to the

county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(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 collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ten dollars ($10.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of fifteen dollars ($15.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of seventeen dollars ($17.00)."

Section 19. G.S. 7A-311(a) reads as rewritten:

"(a) In a civil action or special proceeding, the following fees and commissions shall be assessed, collected, and remitted to the county:

(1) a. ~~Effective October 1, 1990, for every civil action filed on or after that date, for~~ For each item of civil ~~process,~~ process served, including summons, subpoenas, notices, motions, orders, writs and ~~pleadings served,~~ pleadings, the sum of ~~five~~

~~dollars ($5.00).~~ ten dollars ($10.00). When two or more items of civil process are served simultaneously on one party, only one ~~five dollar ($5.00)~~ ten dollar ($10.00) fee shall be charged.

b. When an item of civil process is served on two or more persons or organizations, a separate service charge shall be made for each person or organization. If the process is served, or attempted to be served, by a city policeman, the fee shall be remitted to the city rather than the county. If the process is served, or attempted to be served by the sheriff, the fee shall be remitted to the county. This subsection shall not apply to service of summons to jurors.

(2) For the seizure of personal property and its care after seizure, all necessary expenses, in addition to any fees for service of process.

(3) For all sales by the sheriff of property, either real or personal, or for funds collected by the sheriff under any judgment, five percent (5%) on the first five hundred dollars ($500.00), and two and one-half percent (2 1/2%) on all sums over five hundred dollars ($500.00), plus necessary expenses of sale. Whenever an execution is issued to the sheriff, and subsequently while the execution is in force and outstanding, and after the sheriff has served or attempted to serve such execution, the judgment, or any part thereof, is paid directly or indirectly to the judgment creditor, the fee herein is payable to the sheriff on the amount so paid. The judgment creditor shall be responsible for collecting and paying all execution fees on amounts paid directly to the judgment creditor.

(4) For execution of a judgment of ejectment, all necessary expenses, in addition to any fees for service of process.

(5) For necessary transportation of individuals to or from State institutions or another state, the same mileage and subsistence allowances as are provided for State employees."

PART V. PUBLIC UTILITIES REGULATORY FEE

Section 20. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1998.

PART VI. INSURANCE REGULATORY CHARGE

Section 21. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six percent (6%) for the 1998 calendar year.

Section 22. G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term 'insurance company' means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except a service

corporation subject to Article 65 of this Chapter. A health maintenance organization subject to Article 67 of this Chapter is not subject to those taxes and is therefore not subject to the charge levied in this section. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) ~~additional~~ Additional taxes imposed by G.S. ~~105-228.8,~~ 105-228.8.

(2) The ~~the~~ additional local fire and lightning tax imposed by G.S. ~~105-228.5(d)(4), and any~~ 105-228.5(d)(4).

(3) Any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. ~~97-133(a) shall be disregarded.~~ 97-133(a).

(4) Any tax credits allowed under Chapter 105 of the General Statutes other than tax payments made by or on behalf of the taxpayer."

PART VII. EFFECTIVE DATES

Section 23. PARTS I, II, and IV of this act become effective November 1, 1998; PART II applies to autopsies or other studies performed on or after November 1, 1998, and PART IV applies to fees assessed or paid on or after November 1, 1998. PART III of this act becomes effective January 1, 1999. PART V of this act becomes effective July 1, 1998. PART VI of this act becomes effective January 1, 1998. The remainder of this act is effective when it becomes law.

Rep C. Wilson

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1199 A BILL TO BE ENTITLED AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEE, TO SET THE INSURANCE REGULATORY CHARGE, TO INCREASE VARIOUS FEES, TO ESTABLISH A FEE FOR FAIRNESS HEARING CONDUCTED BY THE OFFICE OF THE SECRETARY OF STATE, TO INCREASE THE AUTOPSY FEE, AND TO REVISE AND PLACE INTO THE GENERAL STATUTES THE SCHEDULE OF FEES FOR PERMITS UNDER THE WATER QUALITY PROGRAM.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☑ With a favorable report as to House committee substitute bill (# 2), ☑ which changes the title, unfavorable as to ~~Senate~~ House committee substitute bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

House Finance — 9-2-98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Allyson Duncan	Kilpatrick Stockton
Ben Kuhn	Kilpatrick Stockton
Jim Blackburn	NC Association of County Commissioners
Patrice Roesler	" "
Andy Romanet	N.C.L.M.
Ann Lane	NCRMA
Alice Garland	EC
Robert Brinn	Jordan Price Wall
Dave Jones	Smith Anderson
Nancy Jo Bain	Smith Anderson
PA	NCAE
David Simmons	ZDA, PA

VISITOR REGISTRATION SHEET

House Finance — 9/2/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	NC Bar Assoc.
Linda Pope	Sec. of State
David Thomasson	Secretary of State
Bernard Allen	SOS
Robert Pasichal	Young, Moore + Henderson
Dan Gerlach	NCBTC
Andy Sobol	Dept of Revenue
Patti Seawell	NC DOR
Paul Gwin	OSBM
Roy	NCDOT
John Policastro	AT&T
	WCSR

VISITOR REGISTRATION SHEET

Horse Pasture 9/2/98

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS

VISITOR REGISTRATION SHEET

Horse Pasture — 9/2/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Hubert Tilson	NCHA
Laura DeVos	DENR
Doug Miskew	IBM
Steve Keene	NCMS
Betsy Justus	BRC
Anne Coan	NC Farm Bureau Fed
[illegible]	NCPC
[illegible]	DHE
Charlie Penn	Fiscal Research Staff
Chris Wyatt	Sprint
Jim Ritchey	TTA
Alina Gregory	Poyner & Spruill

VISITOR REGISTRATION SHEET

House Finance — 9/3/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Tony Kaplan	
Natalie Haskins	Charlotte Chamber
Ruth Sappie	NCDOT
Michelle Cook	Weyerhaeuser
Paul Wilms	NCAIBA
Ron Aycock	NCACC
Nick Hale	NCDOI
Starla McKinney	NC DOI
Deschail Pryor	NC DOI
Crissy Parker	Bone & Associates

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, SEPTEMBER 1, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Tuesday, September 1, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken (roll list denotes members present).

Chairman Dickson called the meeting to order.

HB-1720 ADOPTION AND SAFE FAMILIES ACT/FUNDS

Rep. Culpepper explained the bill. Rep. Brawley sent forth a technical amendment. Ms. Gann Watson, Fiscal Research explained the amendment. The vote was taken and the amendment was adopted.

Rep. Cunningham asked if all state divisions supported this. Ms. Sharnese Ranson, Division of Social Services, addressed members in support.

Rep. Cunningham moved for a favorable report.

Rep. Womble questioned the fee and Rep. Culpepper responded. Ms. Ranson also gave additional comments regarding the fee. Rep. Womble supports the bill but questioned criminal checks. Rep. Culpepper responded. Rep. Hackney questioned the change that the amendment made. Ms. Watson replied. Rep. Nesbitt questioned paragraph 7 on Page 3 and Ms. Watson explained. Rep. Culpepper made additional comments. Rep. Nesbitt spoke again. Mr. Chuck Harris, Children Services, DSS, addressed members. Rep. Nesbitt questioned Mr. Harris and he responded. Rep. Barefoot spoke on the bill. Mr. Hugh Stevens, General Council NC Press Association, addressed members. Rep. Hackney questioned how this relates to the Juvenile Justice Bill #SB1260 and he replied. Mr. Stevens also addressed this question. Rep. Hackney had additional questions which Mr. Dave Gordon, Attorney Generals Office responded to. Rep. Hackney asked Mr. Gordon if this conflicts with current federal laws. Mr. Gordon answered and Rep. Culpepper made additional comments.

Rep. Nesbitt sent forth an amendment. Ms. Watson read and explained. Rep. Nesbitt spoke on his amendment. Rep. Culpepper responded to the amendment. Rep. Nesbitt addressed Rep. Culpeppers remarks. The vote was taken and the amendment was adopted.

Rep. Capps questioned Mr. Harris about Page 13, Line 19 and how this changes current law. He responded.

The vote was taken and the bill was given a favorable report, unfavorable to the original bill.

SB-1594 TEACHER CERTIFICATION FEES

Sen. Lee explained the bill. Rep. Brawley moved for a favorable report. Rep. Womble asked if there was opposition. Sen. Lee answered. The vote was taken and passed as moved.

SB-1299 INTERBASIN TRANSFER AMENDMENTS

Sen. Cochrane explained the bill. Rep. Brown spoke on the bill and moved for a favorable report. Rep. Jarrell asked if this changes the Randleman Dam. Sen. Cochrane answered. Rep. Goodwin questioned the sponsor and she responded. Mr. John Morris, Division of Water Resources was asked to address members.

Rep. Cole sent forth an amendment. Mr. George Givens, Research Division read and explained. Rep. Cole made additional comments. Sen. Cochrane remarked about the amendment. Rep. Hackney questioned Rep. Cole and asked if this will affect his neighboring district. Rep. Cole responded. Rep. Hackney questioned Mr. Morris and he also responded.

The vote was taken and the amendment was adopted.

Rep. Luebke asked about farm groups and Sen. Cochrane replied. Rep. Luebke asked about the penalty for not registering. Sen. Cochrane and Mr. Morris responded. Rep. Brawley spoke on the bill. Mr. Givens addressed his comments.

The vote was taken and the bill was given a favorable report, unfavorable to the original bill.

SB-1552 CHANGES TO THE NOTARY PUBLIC ACT

Rep. C. Wilson moved for the adoption of the proposed committee substitute for discussion. So moved. Sen. Kerr explained.

Rep. Nesbitt sent forth an amendment, explained and urged adoption. Rep. Neely spoke against the amendment. Sen. Kerr responded to Rep. Neely's comments. Rep. Wilson spoke against the amendment. Rep. Capps agreed

with Rep. Neely's comments and spoke against the amendment. Rep. Rayfield spoke against the amendment. Rep. Miller spoke in support of the amendment. Rep. Goodwin also supports the amendment. Rep. Hensley and Rep. Womble spoke in support of the amendment. Rep. Neely spoke a second time and urged defeat.

Rep. Brawley spoke and sent forth a perfecting amendment.

Rep. Cunningham spoke against the perfecting amendment. Rep. Brawley spoke again. Rep. Nesbitt spoke against the perfecting amendment. The vote was taken on the perfecting amendment and it was defeated.

The Nesbitt amendment was back before the Committee. Rep. Eddins requested the ayes and noes. Rep. Nichols spoke in favor of the amendment. The vote was taken (by show of hands as asked by the Chairman) and it passed 20-9.

Rep. Cunningham moved for a favorable report, unfavorable to the original bill. The vote was taken and passed as moved.

The meeting adjourned at 10:15 a.m.

Rep. Dickson, Chairman

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

TUESDAY, SEPTEMBER 1, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Dickson

BILLS FOR DISCUSSION:

HB-1720 Adoption & Safe Families Act/Funds	Rep. Culpepper
SB-1299 Interbasin Transfer Amendments	Sen. Cochrane
SB-1552 Changes to Notary Public Act	Sen. Kerr
SB-1594 Teacher Certification Fees	Sen. Lee

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1720*
Committee Substitute Favorable 8/17/98

Short Title: Adoption & Safe Families Act. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CUSTODY OF ABUSED AND NEGLECTED JUVENILES AND JUVENILES PLACED FOR ADOPTION IN CONFORMANCE WITH FEDERAL ADOPTION AND SAFE FAMILIES ACT REQUIREMENTS, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CHANGES TO THE JUVENILE JUSTICE SYSTEM PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

PART I. ADOPTION AND SAFE FAMILIES ACT CHANGES - EFFECTIVE UNTIL JUNE 30, 1999.

Section 1. G.S. 7A-517 reads as rewritten:

"**§ 7A-517. Definitions.**

Unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. -- Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means; or

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means; or

b1. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior; or

c. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and 14-179; preparation of obscene photographs, slides or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties; or

d. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal or aggressive behavior toward himself or others; or

e. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aftercare. -- The supervision of a juvenile who has been returned to the community on conditional release after having been committed to the Division of Youth Services.

(3) Administrator for Juvenile Services. -- The person who is responsible for the planning, organization, and administration of a statewide system of juvenile intake, probation, and aftercare services.

(3a) Aggravated circumstances. -- Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(4) Director of the Division of Youth Services. -- The person responsible for the supervision of the administration of institutional and detention services.

(5) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of Chapter 7A of the General Statutes only.

(6) Chief Court Counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and aftercare in each judicial district, operating under the supervision of the Administrator for Juvenile Services.

(7) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(8) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where his family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(9) Court. -- The District Court Division of the General Court of Justice.

(9a) Court of competent jurisdiction. -- A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(10) Court counselor. -- A person responsible for probation and aftercare services to juveniles on probation or on conditional release from the Division of Youth Services under the supervision of the chief court counselor.

(11) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(12) Delinquent juvenile. -- Any juvenile less than 16 years of age who has committed a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(13) Dependent Juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(14) Detention. -- The confinement of a juvenile pursuant to an order for secure custody pending an adjudicatory or dispositional hearing or admission to a placement with the Division of Youth Services.

(15) Detention home. -- An authorized facility providing secure custody for juveniles.

(15a) District. -- Any district court district as established by G.S. 7A-133.

(16) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(16.1) In loco parentis. -- A person acting in loco parentis means one, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(17) Intake counselor. -- A person who screens a petition alleging that a juvenile is delinquent or undisciplined to determine whether the petition should be filed.

(18) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee or runaway, to his home state.

(19) Judge. -- Any district court judge.

(19a) Judicial district. -- Any district court district as established by G.S. 7A-133.

(20) Juvenile. -- Any person who has not reached his eighteenth birthday and is not married, emancipated, or a member of the armed services of the United States. For the purposes of subdivisions (12) and (28) of this section, a juvenile is any person who has not reached his sixteenth birthday and is not married, emancipated, or a member of the armed forces. A juvenile who is married, emancipated, or a member of the armed forces, shall be prosecuted as an adult for the commission of a criminal offense. Wherever the term 'juvenile' is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(21) Neglected Juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent,

guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(22) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(23) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(24) Prosecutor. -- The assistant district attorney assigned by the district attorney to juvenile proceedings.

(25) Protective supervision. -- The status of a juvenile who has been adjudicated delinquent or undisciplined and is under the supervision of a court counselor.

(25a) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(26) Regional detention home. -- A state-supported and administered regional facility providing detention care.

(26a) Safe home. -- A home in which the child is not at substantial risk of physical or emotional abuse or neglect.

(27) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

(28) Undisciplined juvenile. -- A juvenile less than 16 years of age who is unlawfully absent from school; or who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary control; or who is regularly found in places where it is unlawful for a juvenile to be; or who has run away from home.

(29) Director of the department of social services. -- The director of the county department of social services in the county in which the

juvenile resides or is found, or his representative as authorized in G.S. 108A-14.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 2. G.S. 7A-544 reads as rewritten:

"§ 7A-544. Investigation by Director; access to confidential information; notification of person making the report.

When a report of abuse, neglect, or dependency is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the Director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the Director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social Services, including the identity of the reporter, shall be held in strictest confidence by the Department.

When a report of <u>a juvenile's death as a result of suspected maltreatment or a report of</u> suspected abuse, neglect, or dependency of a juvenile is received, the Director of the Department of Social Services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the Director may consult with any public or private agencies or individuals, including the available State or local law-enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the Director. The Director or the Director's representative may make a written demand for any information or reports, whether or not confidential, that may in the Director's opinion be relevant to the investigation of or the provision for protective services.

Upon the Director's or the Director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the Director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the Director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county Department of Social Services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the Director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification and no notification is required if the person making the report does not identify himself to the Director."

Section 3. G.S. 7A-576 reads as rewritten:

"**§ 7A-576. Place of secure or nonsecure custody.**

(a) A juvenile meeting the criteria set out in G.S. 7A-574, subsection (a), may be placed in nonsecure custody with the Department of Social Services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care or

(2) A facility operated by the Department of Social Services or

(3) Any other home or ~~facility~~ facility, including a relative's home, approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this ~~section and under G.S. 7A-629 and G.S. 7A-651;~~ section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that the placement is contrary to the best interests of the juvenile. ~~Prior to placement~~ In placing a juvenile in nonsecure custody under this section, the court shall consider any federal law that may apply. Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children.

(b) A juvenile meeting the criteria set out in G.S. 7A-574(b) may be temporarily detained in an approved county detention home or a regional detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the standards promulgated by the Department of Health and Human Services."

Section 4. G.S. 7A-577 reads as rewritten:

"§ 7A-577. Hearing to determine need for continued secure or nonsecure custody.

(a) No juvenile shall be held under a secure custody order for more than five calendar days or under a nonsecure custody order for more than seven calendar days, without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on secure custody conducted under this subsection may not be continued or waived. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on nonsecure custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7A-573, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) Any juvenile who is alleged to be delinquent shall be advised of the right to have legal representation as provided in G.S. 7A-584 if the juvenile appears without counsel at the hearing.

(c) At a hearing to determine the need for continued custody, the judge shall receive testimony and shall allow the juvenile, and the juvenile's parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's

liberty are necessary and that no less intrusive alternative will suffice. The judge shall not be bound by the usual rules of evidence at such hearings.

(d) The judge shall be bound by criteria set forth in G.S. 7A-574 in determining whether continued custody is warranted.

(e) The judge shall impose the least restrictive interference with the liberty of a juvenile who is released from secure custody including:

(1) Release on the written promise of the juvenile's parent, guardian, or custodian to produce the juvenile in court for subsequent proceedings; or

(2) Release into the care of a responsible person or organization; or

(3) Release conditioned on restrictions on activities, associations, residence or travel if reasonably related to securing the juvenile's presence in court; or

(4) Any other conditions reasonably related to securing the juvenile's presence in court.

(f) If the judge determines that the juvenile meets the criteria in G.S. 7A-574 and should continue in custody, the judge shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(g) Pending a hearing on the merits, further hearings to determine the need for continued secure custody shall be held at intervals of no more than seven calendar days. A subsequent hearing on continued nonsecure custody shall be held within seven business days, excluding Saturdays, Sundays, and legal holidays, of the initial hearing required in subsection (a) of this section and hearings thereafter shall be held at intervals of no more than 30 calendar days.

(g1) Hearings conducted under subsection (g) of this section may be waived as follows:

(1) In the case of a juvenile alleged to be delinquent, only with the consent of the juvenile, through counsel for the juvenile; and

(2) In the case of a juvenile alleged to be abused, neglected, or dependent, only with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

~~(h) Any order authorizing the continued nonsecure custody of a juvenile who is alleged to be abused, neglected, or dependent shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued nonsecure custody when the court finds that continued nonsecure custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the~~

~~juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

(i) At each hearing to determine the need for continued nonsecure custody, the court shall:

(1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative.~~ relative unless the court finds that the placement is contrary to the best interests of the juvenile. ~~Prior to placement~~ In placing a juvenile in nonsecure custody under this section, the court shall first consider any federal law that may apply. Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7A-544 and any actions taken or services provided by the Director for the protection of the other juveniles."

Section 4.1. Article 46 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-577.1. Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously

determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7A-517(3a);

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7A-657.1 be held

within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 5. G.S. 7A-629 reads as rewritten:

"**§ 7A-629. Adjudicatory hearing.**

The adjudicatory hearing shall be held in the district at such time and place as the chief district judge shall ~~designate.~~ designate but no later than 60 days from the filing of the petition, unless the judge pursuant to G.S. 7A-632 orders that it be held at a later time. The judge may exclude the general public from ~~the~~ a hearing in which a juvenile is alleged to be undisciplined or delinquent unless the juvenile moves that the hearing be open, which motion shall be granted. At a hearing in which a juvenile is alleged to be abused, neglected, or dependent, the judge shall exclude the general public."

Section 6. G.S. 7A-647 reads as rewritten:

"**§ 7A-647. Dispositional alternatives for delinquent, undisciplined, abused, neglected, or dependent juvenile.**

The following alternatives for disposition shall be available to any judge exercising jurisdiction, and the judge may combine any of the applicable alternatives when he finds such disposition to be in the best interest of the juvenile:

(1) The judge may dismiss the case, or continue the case in order to allow the juvenile, parent, or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

a. Require that he be supervised in his own home by the Department of Social Services in his county, a court counselor or other personnel as may be available to the court, subject to conditions applicable to the parent or the juvenile as the judge may specify; or

b. Place him in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place him in the custody of the Department of Social Services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the Department of Social Services in the county where he is found so that agency may return the juvenile to the responsible authorities in his home state. The Director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case

where the parent is unknown, unavailable or unable to act on behalf of their child or children, the Director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county Department of Social Services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the Director shall make reasonable efforts to obtain consent from a parent or guardian of the affected child. If the Director can not obtain such consent, the Director shall promptly notify the parent or guardian that care or treatment has been provided and shall give him frequent status reports on the circumstances of the child. Upon request of a parent or guardian of the affected child, the results or records of the aforementioned evaluations, findings or treatment shall be made available to such parent or guardian by the Director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the Director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent or person standing in loco parentis without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the judge may order that the juvenile be examined by a physician, psychiatrist, psychologist or other qualified expert as may be needed for the judge to determine the needs of the juvenile.

a. Upon completion of the examination, the judge shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other

treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the judge finds the juvenile to be in need of medical, surgical, psychiatric, psychological or other treatment, the judge shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the judge may order the needed treatment, surgery or care, and the judge may order the parent to pay the cost of the care pursuant to G.S. 7A-650. If the judge finds the parent is unable to pay the cost of treatment, the judge shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the judge believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the judge shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the judge may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a judge and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of his treatment, the hospital shall

submit to the judge a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

(4) In any case in which a juvenile, who was at least eleven years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

Section 7. G.S. 7A-651 reads as rewritten:

"**§ 7A-651. Dispositional order.**

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent or person standing in loco parentis shall direct that the review hearing required by G.S. 7A-657 be held within ~~six months of~~ 90 days from the date of the ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order ~~directing placement of a juvenile in foster care shall also contain:~~ shall comply with the requirements of G.S. 7A-577.1.

~~(1) A finding that the juvenile's continuation in or return to his own home would be contrary to the juvenile's best interest; and~~

~~(2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~

~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent~~

~~home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile.~~ Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court.

(e) An order that commits a juvenile to the Division of Youth Services shall recite detailed findings that support commitment to the Division as the least restrictive alternative in light of the circumstances. These findings shall state that all alternatives to commitment prescribed in G.S. 7A-647, 7A-648, and 7A-649 have been attempted unsuccessfully or were considered and found to be inappropriate and that the juvenile's behavior constitutes a threat to persons or property in the community. These findings shall be supported by substantial evidence in the record that the judge determined the needs of the juvenile, determined the appropriate community resources required to meet those needs, and explored and exhausted or considered inappropriate those resources prior to committing the juvenile to the Division."

Section 8. G.S. 7A-657 reads as rewritten:

"**§ 7A-657. Review of custody order.**

(a) In any case where custody is removed from a ~~parent,~~ parent or person standing in loco parentis, the judge shall conduct a review hearing within ~~six months of~~ 90 days from the date ~~the order was entered,~~ of the dispositional hearing ~~shall conduct a second review within six months after the first review,~~ and shall conduct a subsequent ~~reviews~~ review hearing within six months ~~at least every year~~ thereafter. The Director of Social Services shall make a timely ~~requests~~ request to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile matters. ~~matters within six months of the date the order was entered. The Director shall make timely requests for calendaring subsequent reviews.~~ The clerk shall give 15 days' notice of the review and its purpose to the parent ~~or~~ and to any ~~the~~ person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a), may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order

that review hearings be held less often than every ~~12~~ six months, if the court finds by clear, cogent and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year; and

(2) The placement is stable and continuation of the placement is in the juvenile's best interest; and

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every ~~12~~ six months; and

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from ~~the Department of Social Services, the court counselor, the juvenile, the parent or person standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any public or private agency~~ the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time;

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;

(3) Goals of the foster care placement and the appropriateness of the foster care plan;

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;

(5a) An appropriate visitation plan;

(5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile;

(6) When and if termination of parental rights should be considered;

(7) Any other criteria the court deems necessary.

(d) The judge, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or may make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or person standing in loco parentis without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

~~(d1) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

(e) The provisions of ~~subsections (b), (c), and (d) of G.S. 7A-651~~ G.S. 7A-577.1 shall apply to any order entered under this ~~section which continues the foster care placement of a juvenile.~~ section."

Section 8.1. Article 52 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-657.1. Permanency planning hearing.**

(a) In any case where custody is removed from a parent or person standing in loco parentis, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7A-657. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent and to any person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or

agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued, and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody is restored to a parent, or findings are made in accordance with G.S. 7A-657(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7A-577.1 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;

(2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or

(3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 9. G.S. 7A-659 reads as rewritten:

"**§ 7A-659. Post termination of parental rights' placement court review.**

(a) The purpose of each placement review is to insure that every reasonable effort is being made to provide for a permanent placement plan for the child who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the child's best interest. At each review hearing the court may consider information from the Department of Social Services, the licensed child-placing agency, the guardian ad litem, the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7A-289.24(2) through (5) and a county director or licensed child-placing agency has custody of the child. The court shall conduct reviews every six months thereafter until the child is placed for adoption and the adoption petition is filed by the adoptive parents.

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the child if he is at least 12 years of age, the legal custodian of the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, the guardian ad litem, if any, and any other person or agency the court may specify. Only the child if he is at least 12 years of age, the legal custodian of the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(2) If a guardian ad litem for the child has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the child. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the child's best interest and the efforts of the department or agency to implement such plan;

(2) Whether the child has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the child.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the child.

(e) If the child has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file and the review hearing shall be cancelled, with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of

discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 9.1. Article 24B of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-289.23.1. Pending child abuse, neglect, or dependency hearings.**

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7A-565 shall be served with the petition to terminate parental rights in accordance with G.S. 1A-1, Rule 5."

Section 10. G.S. 78A-289.27 reads as rewritten:

"**§ 7A-289.27. Issuance of summons.**

(a) Except as provided in G.S. 7A-289.26, upon the filing of the petition, the court shall cause a summons to be issued, directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the child;

(2) Any person who has been judicially appointed as guardian of the person of the child;

(3) The custodian of the child appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a child has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General ~~Statutes;~~ Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and

(5) The child, if he or she is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the child to a county department of social services or licensed child-placing agency, nor to any parent who has consented to the adoption of the child by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability even though such parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor child;

(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

(3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;

(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;

(5) Notice that the date, time and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed;

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7A-289.32, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 11. G.S. 7A-289.32 reads as rewritten:

"**§ 7A-289.32. Grounds for terminating parental rights.**

The court may terminate the parental rights upon a finding of one or more of the following:

(1) Repealed by Session Laws 1979, c. 669, s. 2.

(2) The parent has abused or neglected the child. The child shall be deemed to be abused or neglected if the court finds the child to be an abused child within the meaning of G.S. 7A-517(1), or a neglected child within the meaning of G.S. 7A-517(21).

(3) The parent has willfully left the child in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the child. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the child on account of their poverty.

(3a) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence.

(4) The child has been placed in the custody of a county Department of Social Services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the

cost of care for the child although physically and financially able to do so.

(5) One parent has been awarded custody of the child by judicial decree, or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the child, as required by said decree or custody agreement.

(6) The father of a child born out of wedlock has not prior to the filing of a petition to terminate his parental rights:

a. Establish(ed) paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the child pursuant to provisions of G.S. 49-10, or filed a petition for this specific purpose; or

c. Legitimated the child by marriage to the mother of the child; or

d. Provided substantial financial support or consistent care with respect to the child and mother.

(7) That the parent is incapable of providing for the proper care and supervision of the child, such that the child is a dependent child within the meaning of G.S. 7A-517(13), and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(8) The parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the petition. For the purpose of this subdivision, a child may be willfully abandoned by his or her natural father if the mother of the child had been willfully abandoned by and was living separate and apart from the father at the time of the child's birth, although the father may not have known of such birth; but in any event the child must be over the age of three months at the time of the filing of the petition.

(9) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent,

or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(10) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 12. G.S. 48-1-101 is amended by adding a new subdivision to read:

"**§ 48-1-101. Definitions.**

In this Chapter, the following definitions apply:

(1) 'Adoptee' means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.

(2) 'Adoption' means the creation by law of the relationship of parent and child between two individuals.

(3) 'Adult' means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.

(3a) 'Adoption facilitator' means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.

(4) 'Agency' means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. 'Agency' also means a county department of social services in this State.

(5) 'Child' means a son or daughter, whether by birth or adoption.

(5a) 'Criminal history' means a county, State, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of

G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(6) 'Department' means the North Carolina Department of Health and Human Services.

(7) 'Division' means the Division of Social Services of the Department.

(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.

(9) 'Legal custody' of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:

a. Includes the right and the duty to protect, care for, educate, and discipline the individual;

b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and

c. May include the right to have physical custody of the individual.

(10) 'Minor' means an individual under 18 years of age who is not an adult.

(11) 'Party' means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.

(12) 'Physical custody' means the physical care of and control over an individual.

(13) 'Placement' means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:

a. Direct placement by a parent or the guardian of the minor; or

b. Placement by an agency.

(14) 'Preplacement assessment' means a document, whether prepared before or after placement, that contains the information required by G.S. 48-3-303 and any rules adopted by the Social Services Commission.

(15) 'Relinquishment' means the voluntary surrender of a minor to an agency for the purpose of adoption.

(16) 'Report to the court' means a document prepared in accordance with G.S. 48-2-501, et seq.
(17) 'State' means a state as defined in G.S. 12-3(11).
(18) 'Stepparent' means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

Section 13. G.S. 48-3-203 reads as rewritten:

"**§ 48-3-203. Agency placement adoption.**

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any individual upon request a written statement of the services it provides and of its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection process. This statement must include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter."

Section 14. G.S. 48-3-303 reads as rewritten:

"**§ 48-3-303. Content and timing of preplacement assessment.**

(a) A preplacement assessment shall be completed within 90 days after a request has been accepted.

(b) The preplacement assessment must be based on at least one personal interview with each individual being assessed in the individual's residence and any report received pursuant to subsection (c) of this section.

(c) The preplacement assessment must, after a reasonable investigation, report on the following about the individual being assessed:

(1) Age and date of birth, nationality, race, or ethnicity, and any religious preference;

(2) Marital and family status and history, including the presence of any children born to or adopted by the individual and any other children in the household;
(3) Physical and mental health, including any addiction to alcohol or drugs;
(4) Educational and employment history and any special skills;
(5) Property and income, and current financial information provided by the individual;
(6) Reason for wanting to adopt;
(7) Any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;
(8) Whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, dependent, neglected, abandoned, or delinquent, and the outcome of the proceeding;
(9) Whether the individual has ever been convicted of a crime other than a minor traffic violation;
(10) Whether the individual has located a parent interested in placing a child with the individual for adoption and a brief, nonidentifying description of the parent and the child; and
(11) Any other fact or circumstance that may be relevant to a determination of the individual's suitability to be an adoptive parent, including the quality of the environment in the home and the functioning of any children in the household.

When any of the above is not reasonably available, the preplacement assessment shall state why it is unavailable.

(d) The agency shall conduct an investigation for any criminal record as permitted by law. If a prospective adoptive parent is seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, a county department of social services shall have the individual's criminal history investigated pursuant to G.S. 48-3-309, and based on the criminal history, make a determination pursuant to subsection (e) of this section as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In the preplacement assessment, the agency shall review the information obtained pursuant to subsections (b), (c), and (d) of this section and evaluate the individual's strengths and weaknesses to be an adoptive parent. The agency shall then determine whether the individual is suitable to be an adoptive parent.

(f) If the agency determines that the individual is suitable to be an adoptive parent, the preplacement assessment shall include specific factors which support that determination.

(g) If the agency determines that the individual is not suitable to be an adoptive parent, the replacement assessment shall state the specific concerns which support that determination. A specific concern is one that reasonably indicates that placement

of any minor, or a particular minor, in the home of the individual would pose a significant risk of harm to the well-being of the minor.

(h) In addition to the information and finding required by subsections (c) through (g) of this section, the preplacement assessment must contain a list of the sources of information on which it is based.

(i) The Social Services Commission shall have authority to establish by rule additional standards for preplacement assessments."

Section 15. Effective January 1, 1999, Article 3 of Chapter 48 of the General Statutes is amended by adding the following new section to read:

"**§ 48-3-309. Mandatory preplacement criminal checks of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.**

(a) The department shall ensure that the criminal histories of all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement and, based on the criminal history, a determination is made as to the individual's fitness to have responsibility for the safety and well-being of children. The department shall ensure that all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement for county, state, and federal criminal histories.

(b) A county department of social services may issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services determines pursuant to G.S. 48-3-303(e) that the individual is unfit to have responsibility for the safety and well-being of children based on the criminal history.

(c) The Department of Justice shall provide to the Department of Health and Human Services the criminal history of such a prospective adoptive parent obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(d) At the time of the request for a preplacement assessment or at a subsequent time prior to placement, a prospective adoptive parent whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED

PRIOR TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS SEEKING TO ADOPT A MINOR WHO IS IN THE CUSTODY OR PLACEMENT RESPONSIBILITY OF A COUNTY DEPARTMENT OF SOCIAL SERVICES.

'Criminal history' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you are denied a favorable preplacement assessment by a county department of social services as a result of the criminal history check, you may request a review of the assessment pursuant to G.S. 48-3-308(a).

Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the issuance by a county department of social services of an unfavorable preplacement assessment. Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(e) The department shall notify the prospective adoptive parent's supervising county department of social services of the results of the criminal history check in accordance with the federal and State law regulating the dissemination of the contents of the criminal history file. The department shall not release nor disclose

any portion of the prospective adoptive parent's criminal history to the prospective adoptive parent. The department shall also ensure that the prospective adoptive parent is notified of the prospective adoptive parent's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the prospective adoptive parent's right to contest the preplacement assessment of the county department of social services.

A prospective adoptive parent who disagrees with the preplacement assessment of the county department of social services may request a review of the assessment pursuant to G.S. 48-3-308(a).

(f) All the information that the department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There is no liability for negligence on the part of a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(h) The Department of Justice shall perform the State and national criminal history checks on prospective adoptive parents seeking to adopt a minor in the custody or placement responsibility of a county department of social services and shall charge the Department of Health and Human Services a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Health and Human Services, shall bear the costs of implementing this section."

Section 16. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-4-19.7. Criminal record checks prior to placement of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.**

The Department of Justice may provide to the Division of Social Services, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the

individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 17. The Legislative Research Commission may study changes proposed to the juvenile justice system contained in House Bill 1561 and Senate Bill 1513, 1997 General Assembly. The study may include other issues relevant to child abuse, neglect, and dependency cases. The Commission shall report its findings, recommendations, and any legislative proposals to the 1999 General Assembly.

PART II. ADOPTION AND SAFE FAMILIES ACT - EFFECTIVE JULY 1, 1999.

Section 18. G.S. 7B-101, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-101. Definitions.

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. -- Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and G.S. 14-179; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or

disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties;

e. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(1a) Aggravated circumstances. -- Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(2) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(3) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(4) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(5) Court. -- The district court division of the General Court of Justice.

(5a) Court of competent jurisdiction. -- A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(7) Dependent juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(8) Director. -- The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(9) District. -- Any district court district as established by G.S. 7A-133.

(10) Judge. -- Any district court judge.

(11) Judicial district. -- Any district court district as established by G.S. 7A-133.

(12) Juvenile. -- A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed services of the United States.

(13) Neglected juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(14) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(15) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(16) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a

reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(17) Safe home. -- A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(18) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 19. G.S. 7B-302, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-302. Investigation by director; access to confidential information; notification of person making the report.**

When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department.

When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the investigation of or the provision for protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director."

Section 20. G.S. 7B-505, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-505. Place of nonsecure custody.**

A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care; or

(2) A facility operated by the department of social services; or

(3) Any other home or ~~facility~~ facility, including a relative's home approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that the placement is contrary to the best interests of the juvenile. ~~Prior to placement~~ Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children, Article 38 of this Chapter."

Section 21. G.S. 7B-506, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-506. Hearing to determine need for continued nonsecure custody.**

(a) No juvenile shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings.

(c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining whether continued custody is warranted.

(d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and should continue in custody, the court shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(e) If the court orders at the hearing required in subsection (a) of this section that the juvenile remain in custody, a subsequent hearing on continued custody shall be held within seven business days of that hearing, excluding Saturdays, Sundays, and legal holidays, and pending a hearing on the merits, hearings thereafter shall be held at intervals of no more than 30 calendar days.

(f) Hearings conducted under subsection (e) of this section may be waived only with the consent of the juvenile's parent, guardian, custodian, or caretaker, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

~~(g) Any order authorizing the continued custody of a juvenile shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued custody when the court finds that continued custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

(h) At each hearing to determine the need for continued custody, the court shall:

(1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative.~~ relative unless the court finds that the placement is contrary to the best interests of the juvenile. ~~Prior to placement~~ Placement of a

juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles."

Section 21.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-577.1, as enacted in Part I of this act is recodified as G.S. 7B-506.1 and reads as rewritten:

"**§ 7B-506.1. Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable

efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. ~~7A-517(3a);~~ 7B-101(1a);

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntarily manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent..

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. ~~7A-657.1~~ 7B-906.1 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 22. G.S. 7B-801, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-801. Adjudicatory hearing.**

The adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall ~~designate.~~ designate but no later than 60 days from the filing of the petition, unless the judge pursuant to G.S. 7B-803 orders that it be held at a later time. ~~The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.~~ At a hearing in which a juvenile is alleged to be abused, neglected, or dependent, the judge shall exclude the general public."

Section 23. G.S. 7B-903, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

(1) The court may dismiss the case or continue the case in order to allow the parent or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:

a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify; or

b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the court, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d). <u>If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the Director shall not allow unsupervised visitation</u>

with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile:

a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not

be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, custodian, or caretaker refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question."

Section 24. G.S. 7B-905, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-905. Dispositional order.**

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker shall direct that the review hearing required by G.S. 7B-906 be held within ~~six months~~ 90 days from of the date of the ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order ~~directing placement of a juvenile in foster care shall also contain:~~ shall comply with the requirements of G.S. 7B-506.1.

~~(1) A finding that the juvenile's continuation in or return to the juvenile's home would be contrary to the juvenile's best interests; and~~

~~(2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~

~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile.~~ Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court."

Section 25. G.S. 7B-906, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-906. Review of custody order.**

(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within ~~six months of~~ 90 days from the date ~~the order was entered,~~ of the dispositional hearing ~~shall conduct a second review within six months after the first review,~~ and shall conduct ~~subsequent reviews at least every year thereafter.~~ a review hearing within six months thereafter. The director of social services shall make ~~timely requests~~ a timely request to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile ~~matters within six months of the date the order was entered.~~ matters. ~~The director shall make timely requests for calendaring subsequent reviews.~~ The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make

any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every ~~12~~ six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every 12 months;

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from the ~~department of social services, the juvenile, the parent, the guardian, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will aid it in its review.~~ parent, the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care.

(3) Goals of the foster care placement and the appropriateness of the foster care plan.

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent.

(5a) An appropriate visitation plan.

(5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.

(6) When and if termination of parental rights should be considered.

(7) Any other criteria the court deems necessary.

(d) The court, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by G.S. 7B-903, including the authority to place the juvenile in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent, guardian, custodian, or caretaker without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. If at any time custody is restored to a parent, guardian, custodian, or caretaker the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

~~(e) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the court shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

(f) The provisions of ~~subsections (b), (c), and (d) of G.S. 7B-905~~ G.S. 7B-506.1 shall apply to any order entered under this ~~section which continues the foster care placement of a juvenile.~~ section."

Section 25.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-657.1 as enacted in Part I of this act is recodified as G.S. 7B-906.1 and reads as rewritten:

"**§ 7B-906.1. Permanency planning hearing.**

(a) In any case where custody is removed from a ~~parent or person standing in loco parentis,~~ parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. ~~7A-657.~~ 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent

plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the ~~parent and to any person standing in loco parentis,~~ parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, ~~any person standing in loco parentis,~~ the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. ~~7A-585~~ 7B-600 or make any disposition authorized by G.S. ~~7A-647~~ 7B-903 including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in

accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody is restored to a parent, or findings are made in accordance with G.S. ~~7A-657(b),~~ 7B-906(b) the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. ~~7A-577.1~~ 7B-506.1 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;

(2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or

(3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 26. G.S. 7B-907, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-907. Posttermination of parental rights' placement court review.**

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the ~~juvenile, the~~ child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1102(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed

in the court file, and the review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 26.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-289.23.1 as enacted in Part I of this act is recodified as G.S. 7B-1101.1 and reads as rewritten:

"**§ 7B-1101.1. Pending child abuse, neglect, or dependency hearings.**

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. ~~7A-565~~ 7B-407 shall be served with the petition to terminate parental rights in accordances with G.S. 1A-1, Rule 5."

Section 27. G.S. 7B-1105, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-1105. Issuance of summons.**

(a) Except as provided in G.S. 7B-1104, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the juvenile;

(2) Any person who has been judicially appointed as guardian of the person of the juvenile;

(3) The custodian of the juvenile appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General ~~Statutes;~~ Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and

(5) The juvenile, if the juvenile is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor juvenile;

(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

(3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;

(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;

(5) Notice that the date, time, and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7B-1110, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 28. G.S. 7B-1110, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-1110. Grounds for terminating parental rights.**

The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101(1) or a neglected juvenile within the meaning of G.S. 7B-101(14)

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in

correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence.

(4) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(5) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(6) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(7) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101(7), and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(8) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition. For the purpose of this subdivision, a juvenile may be willfully abandoned by the juvenile's natural father if the mother of the juvenile had been willfully abandoned by and was living separate and apart from the father at the time of the juvenile's birth, although the father may not have known of such birth; but in any event the juvenile must be over the age of three months at the time of the filing of the petition.

(9) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(10) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 29. Sections 1 through 9 of this act become effective December 1, 1998, and apply to abuse, neglect, and dependency reports received, juvenile petitions filed, and review hearings commenced on and after that date. Sections 10 and 11 of this act become effective December 1, 1998, and apply to termination of parental rights petitions filed on and after that date. Sections 12 through 16 of this act become effective January 1, 1999, and apply to any placement of a minor who is in the custody or placement responsibility of a county department of social services on and after that date. If the 1997 General Assembly enacts Senate Bill 1260, Sections 1 through 4, 5 through 8, 9, 10, and 11 of this act expire June 30, 1999, and Sections 18 through 28 of this act become effective on July 1, 1999. The remainder of this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1720 (2nd Edition):
Adoption & Safe Families Act

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 31, 1998
SPONSOR: Representative Culpepper

The committee substitute for House Bill 1720 was given a favorable report by House Judiciary II on August 17, 1998. Part 1 of the bill makes changes to the North Carolina Juvenile Code and the Adoption Chapter in the General Statutes to ensure that these statutes are in compliance with the federal requirements of Public Law 105-89. This compliance with federal law will ensure continuation of federal funding for the foster care and adoption program. Part II of the bill makes conforming changes to sections of the North Carolina Juvenile Code if Senate Bill 1260 (Juvenile Justice Reform Act) is enacted. The House Committee Substitute is different from the 1st Edition in that it authorizes an LRC study and deletes a $95,399 appropriation. **The Bill is before House Finance because of a fee imposed in Section 15 of the Bill.**

PART I

The bill amends the N.C. Juvenile Code in Chapter 7A as follows:

Section 1 adds new definitions for "aggravated circumstances" and "court of competent jurisdiction." The section amends the definition for "neglected juvenile" by adding that in determining whether a juvenile is a "neglected juvenile", it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect The definition for reasonable efforts is amended by adding: If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

Section 2 directs the Director of the Department of Social Services, upon receipt of a report of a juvenile's death as a result of suspected maltreatment , to immediately ascertain if other juveniles are in the home, and, if so, initiate an investigation.

Section 3 provides for placement of a juvenile, meeting the requirements of nonsecure custody, to be placed in a relative's home, unless the court finds the placement is contrary to the best interests of the juvenile. The court must also

consider any federal law that may apply. This finding must also be made by the court in a hearing to determine the need for continued nonsecure custody.

Section 4.1 adds a new section to the Juvenile Code spelling out the reasonable efforts that the Department of Social Services must make to prevent or eliminate the need for placement of the juvenile in custody.

Section 5 Under current law, the chief district court judge determines the date of an adjudicatory hearing and may exclude the public unless the juvenile moves that the hearing be open. House Bill 1720 requires that the hearing be held no later than 60 days from the filing of the juvenile petition, unless the judge orders a continuance for good cause. The bill further allows the judge to exclude the general public from a hearing of an alleged undisciplined or delinquent juvenile, unless the juvenile moves for an open hearing. The judge must exclude the general public if the juvenile is alleged to be abused, neglected, or dependent.

Section 6 provides that if a juvenile is placed in the custody or placement responsibility of a county DSS, then the director of the DSS shall not allow unsupervised visitation or return of physical custody to the parent without a hearing wherein the court finds that the juvenile will receive proper care and supervision in a safe home. When placing a juvenile in out-of-home care, the court must first consider placement with a relative.

Section 7 provides that if a juvenile is placed in the custody or placement responsibility of a county DSS, then the court may order the director to direct a visitation plan approved by the court.

Section 8 requires that a hearing to review a custody order be held 90 days from the dispositional hearing (now 6 months). A subsequent review hearing must be conducted 6 months thereafter. The bill clarifies that a foster parent, relative, or preadoptive parent is not a party to the proceeding solely based on receiving notice and an opportunity to be heard. In making its written findings, the court shall consider the following additional criteria: an appropriate visitation plan, and an independent living assessment if the juvenile is 16 or 17.

Section 8.1 adds a new section to the Juvenile Code describing the requirements of a permanency planning hearing including written findings if the juvenile is not returned home. If a juvenile has been in placement outside the home for 15 of the last 22 months, or if the juvenile has been abandoned or is the child of a parent who has murdered or committed voluntary manslaughter of another child or the parent attempted to kill the child or another child of the

parent, the court must order DSS to initiate proceedings to terminate parental rights. Exceptions to termination are if the permanent plan for the juvenile calls for placements with a relative or some other suitable person, termination is not in the best interest of the child, or DSS has not provided the juvenile's family with services necessary for the juvenile's safe return.

Section 9 provides that at each placement review hearing after the termination of parental rights, the court may also consider information from a relative or preadoptive parents providing care for the child.

Section 9.1 adds a new section to provide that in any abuse, neglect, or dependency proceeding, a petition for termination of parental rights may be filed as a motion in the cause in that proceeding.

Section 10 adds any county DSS to whom placement responsibility for the child has been given by a court, to the list of agencies that will receive a summons in a hearing for termination of parental rights. The DSS must file an answer to the proceeding and is deemed a party.

Section 11 adds the following new grounds for termination of parental rights:

- The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home, or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.
- The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

Sections 12 through 15 of the bill amends the statutes dealing with adoption of minors.

Section 12 adds to the definition section a definition for "criminal history".

Section 13 requires the completion of an investigation of a selected prospective adoptive parent's criminal history and a determination as to the person's fitness to have responsibility for the safety and well-being of children,

before the placement of a minor who is in the custody or placement responsibility of a county DSS.

Section 14 requires the county DSS, to include in the preplacement assessment, a review of the prospective adoptive parent's criminal history and, based upon the criminal history, a determination of the individual's fitness.

Section 15 adds a new section to the adoption of minors law that requires mandatory preplacement criminal checks of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county DSS. **The section provides that the Department of Justice shall charge the Department of Health and Human Services a reasonable fee only for conducting the checks of the national criminal history records authorized by the section. The Division of Social Services within DHHS shall bear the costs of implementing this section.**

Section 16 adds a new section to the State Bureau of Investigation statutes authorizing the Department of Justice to provide to the Department of Health and Human Services, Division of Social Services, the criminal history from the State and National Repositories of Criminal Histories of prospective adoptive parents. The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records.

Section 16 authorizes the LRC to study changes proposed to the juvenile justice system contained in House Bill 1561 and Senate Bill 1513, 1997 General Assembly. The study may include other relevant issues, and the Commission shall report to the 1999 General Assembly.

Sections 1-11 of the Bill become effective December 1, 1998,and Sections 12-16 become effective January 1, 1999.

PART II

The Bill makes conforming changes to sections of the North Carolina Juvenile Code if Senate Bill 1260 (Juvenile Justice Reform Act) is enacted. Part II would be effective July 1, 1999. Sections 1 through 11 would expire June 30, 1999 The changes to the adoption statutes would not expire.

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Memorandum

Date: August 31, 1998

To: Representative Culpepper

From: Gann Watson, Staff Attorney, gannw@ms.ncga.state.nc.us

Subject **H1720 - Adoption Federal Requirements - Certification**

G.S. 120-36.8 requires that every introduced bill that proposes any change in the law which purports to implement federal law or purports to be required or necessary for compliance with federal law, or on which is conditioned the receipt of federal funds, shall have attached a certification identifying the federal law. The certification is to be provided by the Fiscal Research Division in consultation with Bill Drafting/General Research.

House Bill 1720 makes changes to State law to ensure that the State is in compliance with Public Law 105-89, The Adoption and Safe Families Act of 1997. Compliance with P.L. 105-89 is required in order for the State to continue to receive federal funds for the State's foster care and adoption program.

The purpose of the federal law is to assure safe homes for children in a timely manner, expedite reunification of families when reunification is in the child's best interest, provide for permanent placement of children with their relatives when appropriate and in the child's best interest, initiate proceedings to terminate parental rights when parents have not provided for their children or have subjected their children to an unsafe home environment, and to facilitate timely adoption of children for whom reunification with the family is inappropriate. In order to accomplish these purposes, federal law requires the following: the health and safety of children must be of paramount concern when making reasonable efforts to keep children in the home or reunify families when children have been removed; initiate proceedings to terminate parental rights for certain children in foster care; and require criminal history record checks on foster parents and prospective adoptive

parents. These federal requirements also necessitate changes in State law pertaining to permanency planning hearings and to the time lines for adjudicatory, dispositional, and review stages of custody order hearings.

Sections 1- 16 and Section 18 are necessary changes in State law in order to comply with P.L. 105-89. Section 17 appropriates funds to implement the criminal history record checks required for foster care and prospective adoptive parents. Section 2 includes a technical change to the law to restore language deleted in error in S.L. 1997-390.

/gw

This certification has been reviewed and approved for distribution.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1720 (House Committee Substitute)

SHORT TITLE: Adoption & Safe Families Act

SPONSOR(S): Representative William Culpepper

(This fiscal note along with the attached certification, fulfills the requirements of G. S. 120-36.8, Certification of Legislation Required by Federal Law.)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	52,277	60,786	62,586	64,476	66,455
EXPENDITURES	147,676	165,621	171,429	177,525	183,909
NET COST	$95,399	$104,835	$108,843	$113,049	$117,454
POSITIONS:	1.0	1.0	1.0	1.0	1.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Health and Human Services, Division of Social Services and Administrative Office of the Courts

EFFECTIVE DATE: Sections 1-11, December 1, 1998; Sections 12-16, January 1, 1999; all remaining Sections are effective when the bill becomes law.

BILL SUMMARY:

House Bill 1720 incorporates into statute those requirements mandated by Public Law 105-89, The Adoption and Safe Families Act of 1997, passed by the U. S. Congress and signed into law by the President in the fall of 1997. The bill also authorizes the Legislative Research Commission to study changes to the Juvenile Justice System pertaining to child abuse, neglect and dependency.

Several sections in HB 1720 are technical in nature (e.g., Section 2 restores language repealed in error in S.L. 1997-309), simply moving statutes around while other sections are substantive changes as mandated by federal law. These sections are summarized below:

Section 4.1 requires permanency planning hearings to be held within 30 days after the court finds that reasonable efforts are not required or shall cease;

Section 5 specifies that adjudicatory hearings are to be held no more than 60 days from the filing of a petition;

Section 6 prohibits unsupervised visitation or return of physical custody to the parents of a juvenile who is removed from the home and placed under the custody of a county DSS without a hearing;

Section 7 reduces the time frame for holding first review hearings from 6 months to 90 days from the date of the dispositional hearings;

Section 8.1 requires the court to order, in certain circumstances, a department of social services to initiate a proceeding to terminate parental rights when a child in the custody of a local department of social services, has been placed outside of the home for 15 of the most recent 22 months;

Section 8.1 requires subsequent permanency planning hearings to be held every six months; and

Section 15 amends G. S. 48-3-309 to require preplacement criminal checks of prospective adoptive parents seeking to adopt children in the custody or placement responsibility of county departments of social services.

ASSUMPTIONS AND METHODOLOGY: The following assumptions were used:

Administrative Office of the Courts:

The Administrative Office of the Courts estimates that the bill will have some impact on the Judicial System. It estimates that Sections 5 and 8 will have a substantial impact on the Judicial System. Specifically, it is anticipated that there will be a substantial increase in court time due to (1) more filings of petitions to terminate parental rights, (2) additional hearings on the issue of unsupervised visitation, and (3) additional hearings due to the requirement that first review hearings must be held 90 days after the dispositional hearings. **However, AOC is unable to determine the cost impact due to a lack of data needed to estimate the number of additional hearings and the increase in court time resulting from these expedited hearings.**

Other sections in the bill impact on the time within which certain hearings must be held., however AOC cannot estimate the impact of these provisions but assume the impact will be minimal.

Department of Health and Human Services:

1. Estimated 2,300 preplacement criminal history checks for prospective adoptive parents will be conducted during FY98/99; criminal history checks for prospective adoptive parents are estimated to grow approximately 5% each year thereafter;

2. Each complete criminal check costs $48 each ($5 Sheriff/local check; $5 fingerprinting; $14 State Bureau of Investigation; and $24 Federal Bureau of Investigation;

3. Approximately 62% of all criminal history checks are Title IV-E eligible; and
4.
5. Federal receipts (Title IV-E) will partially offset costs for allowable staff and criminal checks (50% federal share).

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Karen Hammonds-Blanks and Marilyn Chism

APPROVED BY:
DATE: August 31, 1998

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1720, 2d ed DATE 9/1/98

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Nesbitt
(Sen.)

moves to amend the bill on page 24, lines 34 through 40

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"petition. ~~For the purpose of this subdivision, a child may be wilfully abandoned by his or her natural father if the mother of the child had been wilfully abandoned by and was living separate and apart from the father at the time of the child's birth, although the father may not have known of such birth; but in any event the child must be over the age of three months at the time of the filing of the petition~~";

as amended by amendment #1,

and, further move to amend the bill on page 53, lines 3 through 9, by striking through the lines beginning after the word "petitions" ~~as~~ as it appears on line 3.

SIGNED Martin Nesbitt

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1720

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1720-ALN-005 Page 1 of __

Date 9-1 ,1998

Comm. Sub. [yes]2d edition
Amends Title []

Representative Brawley

moves to amend the bill on page 1, line 11, by inserting before the word "EFFECTIVE" the words "CERTAIN SECTIONS"; and

further moves to amend the bill on page 22, line 15, by deleting "G.S. 78A-289.27" and substituting "G.S. 7A-289.27"; and

further moves to amend the bill on page 31, line 33, by deleting "§ 114-4-19.7" and substituting "§ 114-19.7"; and

further moves to amend the bill on page 34, line 24, by deleting the word "services" and substituting the word "forces"; and

further moves to amend the bill on page 35, line 37, by deleting the words "parent or other caretaker" and substituting the words "parent, guardian, custodian, or caretaker"; and

further moves to amend the bill on page 38, line 44, through page 39, line 1 by rewriting the lines to read:
"best interests of the juvenile. Placement of a juvenile with a relative outside of this State"; and

further moves to amend the bill on page 40, line 8, by deleting "7B-101(1a)" and substituting "7B-101"; and

further moves to amend the bill on page 41, line 2, by deleting the word "parent" and substituting the words "parent, guardian, custodian, caretaker"; and

further moves to amend the bill on page 45, line 42,

by deleting the word "parent." and substituting the words "parent, guardian, custodian, or caretaker."

further moves to amend the bill on page 51, line 33, through page 53, line 20, by deleting the lines and substituting the following:

"'**§ 7B-1110. Grounds for terminating parental rights.**

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry

maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition. For the purpose of this subdivision, a juvenile may be willfully abandoned by the juvenile's natural father if the mother of the juvenile had been willfully abandoned by and was living separate and apart from the father at the time of the juvenile's birth, although the father may not have known of such birth; but in any event the juvenile must be over the age of three months at the time of the filing of the petition.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1720

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1720-ALN-005 Page 4 of __

involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

(b) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence.'"; and

further moves to amend the bill on page 45, line 13, by striking through the number "12" and inserting immediately before the word "months" the word "six".

SIGNED Robert Brawley
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1720*
Committee Substitute Favorable 8/17/98
Proposed Committee Substitute H1720-PCS3185-LA

Short Title: Adoption & Safe Families Act. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CUSTODY OF ABUSED AND NEGLECTED JUVENILES AND JUVENILES PLACED FOR ADOPTION IN CONFORMANCE WITH FEDERAL ADOPTION AND SAFE FAMILIES ACT REQUIREMENTS, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CHANGES TO THE JUVENILE JUSTICE SYSTEM PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

PART I. ADOPTION AND SAFE FAMILIES ACT CHANGES - CERTAIN SECTIONS EFFECTIVE UNTIL JUNE 30, 1999.

Section 1. G.S. 7A-517 reads as rewritten:

"**§ 7A-517. Definitions.**

Unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. -- Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means; or

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means; or

b1. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior; or

c. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and 14-179; preparation of obscene photographs, slides or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties; or

d. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal or aggressive behavior toward himself or others; or

e. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aftercare. -- The supervision of a juvenile who has been returned to the community on conditional release after having been committed to the Division of Youth Services.

(3) Administrator for Juvenile Services. -- The person who is responsible for the planning, organization, and administration of a statewide system of juvenile intake, probation, and aftercare services.

(3a) Aggravated circumstances. -- Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(4) Director of the Division of Youth Services. -- The person responsible for the supervision of the administration of institutional and detention services.

(5) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of Chapter 7A of the General Statutes only.

(6) Chief Court Counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and aftercare in each judicial district, operating under the supervision of the Administrator for Juvenile Services.

(7) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(8) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where his family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(9) Court. -- The District Court Division of the General Court of Justice.

(9a) Court of competent jurisdiction. -- A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(10) Court counselor. -- A person responsible for probation and aftercare services to juveniles on probation or on conditional release from the Division of Youth Services under the supervision of the chief court counselor.

(11) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(12) Delinquent juvenile. -- Any juvenile less than 16 years of age who has committed a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(13) Dependent Juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(14) Detention. -- The confinement of a juvenile pursuant to an order for secure custody pending an adjudicatory or dispositional hearing or admission to a placement with the Division of Youth Services.

(15) Detention home. -- An authorized facility providing secure custody for juveniles.

(15a) District. -- Any district court district as established by G.S. 7A-133.

(16) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(16.1) In loco parentis. -- A person acting in loco parentis means one, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(17) Intake counselor. -- A person who screens a petition alleging that a juvenile is delinquent or undisciplined to determine whether the petition should be filed.

(18) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee or runaway, to his home state.

(19) Judge. -- Any district court judge.

(19a) Judicial district. -- Any district court district as established by G.S. 7A-133.

(20) Juvenile. -- Any person who has not reached his eighteenth birthday and is not married, emancipated, or a member of the armed services of the United States. For the purposes of subdivisions (12) and (28) of this section, a juvenile is any person who has not reached his sixteenth birthday and is not married, emancipated, or a member of the armed forces. A juvenile who is married, emancipated, or a member of the armed forces, shall be prosecuted as an adult for the commission of a criminal offense. Wherever the term 'juvenile' is used with reference to rights and

privileges, that term encompasses the attorney for the juvenile as well.

(21) Neglected Juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile <u>has died as a result of suspected abuse or neglect or lives in a home where another juvenile</u> has been subjected to abuse or neglect by an adult who regularly lives in the home.

(22) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(23) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(24) Prosecutor. -- The assistant district attorney assigned by the district attorney to juvenile proceedings.

(25) Protective supervision. -- The status of a juvenile who has been adjudicated delinquent or undisciplined and is under the supervision of a court counselor.

(25a) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. <u>If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.</u>

(26) Regional detention home. -- A state-supported and administered regional facility providing detention care.

(26a) Safe home. -- A home in which the child is not at substantial risk of physical or emotional abuse or neglect.

(27) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

(28) Undisciplined juvenile. -- A juvenile less than 16 years of age who is unlawfully absent from school; or who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary

control; or who is regularly found in places where it is unlawful for a juvenile to be; or who has run away from home.

(29) Director of the department of social services. -- The director of the county department of social services in the county in which the juvenile resides or is found, or his representative as authorized in G.S. 108A-14.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 2. G.S. 7A-544 reads as rewritten:

"**§ 7A-544. Investigation by Director; access to confidential information; notification of person making the report.**

When a report of abuse, neglect, or dependency is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the Director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the Director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social Services, including the identity of the reporter, shall be held in strictest confidence by the Department.

When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile is received, the Director of the Department of Social Services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the Director may consult with any public or private agencies or individuals, including the available State or local law-enforcement officers who shall assist in the investigation and evaluation of the

seriousness of any report of abuse, neglect, or dependency when requested by the Director. The Director or the Director's representative may make a written demand for any information or reports, whether or not confidential, that may in the Director's opinion be relevant to the investigation of or the provision for protective services. Upon the Director's or the Director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the Director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the Director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county Department of Social Services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the Director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification and no notification is required if the person making the report does not identify himself to the Director."

Section 3. G.S. 7A-576 reads as rewritten:

"**§ 7A-576. Place of secure or nonsecure custody.**

(a) A juvenile meeting the criteria set out in G.S. 7A-574, subsection (a), may be placed in nonsecure custody with the Department of Social Services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care or
(2) A facility operated by the Department of Social Services or
(3) Any other home or ~~facility~~ facility, including a relative's home, approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this ~~section and under G.S. 7A-629 and G.S. 7A-651,~~ section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that the placement is contrary to the best interests of the juvenile. ~~Prior to placement~~ In placing a juvenile in nonsecure custody under this section, the court shall consider any federal law that may apply. Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children.

(b) A juvenile meeting the criteria set out in G.S. 7A-574(b) may be temporarily detained in an approved county detention home or a regional detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the standards promulgated by the Department of Health and Human Services."

Section 4. G.S. 7A-577 reads as rewritten:

"**§ 7A-577. Hearing to determine need for continued secure or nonsecure custody.**

(a) No juvenile shall be held under a secure custody order for more than five calendar days or under a nonsecure custody order for more than seven calendar days, without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on secure custody conducted under this subsection may not be continued or waived. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on nonsecure custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7A-573, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) Any juvenile who is alleged to be delinquent shall be advised of the right to have legal representation as provided in G.S. 7A-584 if the juvenile appears without counsel at the hearing.

(c) At a hearing to determine the need for continued custody, the judge shall receive testimony and shall allow the juvenile, and the juvenile's parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The judge shall not be bound by the usual rules of evidence at such hearings.

(d) The judge shall be bound by criteria set forth in G.S. 7A-574 in determining whether continued custody is warranted.

(e) The judge shall impose the least restrictive interference with the liberty of a juvenile who is released from secure custody including:

(1) Release on the written promise of the juvenile's parent, guardian, or custodian to produce the juvenile in court for subsequent proceedings; or

(2) Release into the care of a responsible person or organization; or

(3) Release conditioned on restrictions on activities, associations, residence or travel if reasonably related to securing the juvenile's presence in court; or

(4) Any other conditions reasonably related to securing the juvenile's presence in court.

(f) If the judge determines that the juvenile meets the criteria in G.S. 7A-574 and should continue in custody, the judge shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(g) Pending a hearing on the merits, further hearings to determine the need for continued secure custody shall be held at intervals of no more than seven calendar days. A subsequent hearing on continued nonsecure custody shall be held within seven business days, excluding Saturdays, Sundays, and legal holidays, of the initial hearing required in subsection (a) of this section and hearings thereafter shall be held at intervals of no more than 30 calendar days.

(g1) Hearings conducted under subsection (g) of this section may be waived as follows:

(1) In the case of a juvenile alleged to be delinquent, only with the consent of the juvenile, through counsel for the juvenile; and

(2) In the case of a juvenile alleged to be abused, neglected, or dependent, only with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

~~(h) Any order authorizing the continued nonsecure custody of a juvenile who is alleged to be abused, neglected, or dependent shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of~~

~~the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued nonsecure custody when the court finds that continued nonsecure custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

(i) At each hearing to determine the need for continued nonsecure custody, the court shall:

(1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative.~~ relative unless the court finds that the placement is contrary to the best interests of the juvenile. ~~Prior to placement~~ In placing a juvenile in nonsecure custody under this section, the court shall first consider any federal law that may apply. Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7A-544 and any actions taken or services provided by the Director for the protection of the other juveniles."

Section 4.1. Article 46 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-577.1. Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;
(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;
(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;
(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and
(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;
(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7A-517(3a);
(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or
(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or has committed a felony assault

resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7A-657.1 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 5. G.S. 7A-629 reads as rewritten:

"**§ 7A-629. Adjudicatory hearing.**

The adjudicatory hearing shall be held in the district at such time and place as the chief district judge shall ~~designate.~~ designate but no later than 60 days from the filing of the petition, unless the judge pursuant to G.S. 7A-632 orders that it be held at a later time. The judge may exclude the general public from ~~the~~ a hearing in which a juvenile is alleged to be undisciplined or delinquent unless the juvenile moves that the hearing be open, which motion shall be granted. At a hearing in which a juvenile is alleged to be abused, neglected, or dependent, the judge shall exclude the general public."

Section 6. G.S. 7A-647 reads as rewritten:

"**§ 7A-647. Dispositional alternatives for delinquent, undisciplined, abused, neglected, or dependent juvenile.**

The following alternatives for disposition shall be available to any judge exercising jurisdiction, and the judge may combine any of the applicable alternatives when he finds such disposition to be in the best interest of the juvenile:

(1) The judge may dismiss the case, or continue the case in order to allow the juvenile, parent, or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

a. Require that he be supervised in his own home by the Department of Social Services in his county, a court counselor or other personnel as may be available to the court, subject to conditions applicable to the parent or the juvenile as the judge may specify; or

b. Place him in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place him in the custody of the Department of Social Services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the Department of Social Services in the

county where he is found so that agency may return the juvenile to the responsible authorities in his home state. The Director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable or unable to act on behalf of their child or children, the Director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county Department of Social Services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the Director shall make reasonable efforts to obtain consent from a parent or guardian of the affected child. If the Director can not obtain such consent, the Director shall promptly notify the parent or guardian that care or treatment has been provided and shall give him frequent status reports on the circumstances of the child. Upon request of a parent or guardian of the affected child, the results or records of the aforementioned evaluations, findings or treatment shall be made available to such parent or guardian by the Director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the Director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent or person standing in loco parentis without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the judge may order that the juvenile be examined by a physician, psychiatrist, psychologist or other qualified expert as

may be needed for the judge to determine the needs of the juvenile.

a. Upon completion of the examination, the judge shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the judge finds the juvenile to be in need of medical, surgical, psychiatric, psychological or other treatment, the judge shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the judge may order the needed treatment, surgery or care, and the judge may order the parent to pay the cost of the care pursuant to G.S. 7A-650. If the judge finds the parent is unable to pay the cost of treatment, the judge shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the judge believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the judge shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the judge may be substituted for that purpose. In all cases in which a

regional mental hospital refuses admission to a juvenile referred for admission by a judge and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of his treatment, the hospital shall submit to the judge a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

(4) In any case in which a juvenile, who was at least eleven years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

Section 7. G.S. 7A-651 reads as rewritten:

"**§ 7A-651. Dispositional order.**

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent or person standing in loco parentis shall direct that the review hearing required by G.S. 7A-657 be held within ~~six months of~~ 90 days from the date of the ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order ~~directing placement of a juvenile in foster care shall also contain:~~ shall comply with the requirements of G.S. 7A-577.1.

~~(1) A finding that the juvenile's continuation in or return to his own home would be contrary to the juvenile's best interest; and~~

~~(2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of~~

~~harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~

~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile.~~ Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court.

(e) An order that commits a juvenile to the Division of Youth Services shall recite detailed findings that support commitment to the Division as the least restrictive alternative in light of the circumstances. These findings shall state that all alternatives to commitment prescribed in G.S. 7A-647, 7A-648, and 7A-649 have been attempted unsuccessfully or were considered and found to be inappropriate and that the juvenile's behavior constitutes a threat to persons or property in the community. These findings shall be supported by substantial evidence in the record that the judge determined the needs of the juvenile, determined the appropriate community resources required to meet those needs, and explored and exhausted or considered inappropriate those resources prior to committing the juvenile to the Division."

Section 8. G.S. 7A-657 reads as rewritten:

"**§ 7A-657. Review of custody order.**

(a) In any case where custody is removed from a ~~parent,~~ parent or person standing in loco parentis, the judge shall conduct a review hearing within ~~six months of~~ 90 days from the date ~~the order was entered,~~ of the dispositional hearing ~~shall conduct a second review within six months after the first review,~~ and shall conduct a subsequent ~~reviews~~ review hearing within six months ~~at least every year~~ thereafter. The Director of Social Services shall make a timely ~~requests~~ request to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile matters. ~~matters within six months of the date the order was entered. The Director shall make timely requests for calendaring subsequent reviews.~~ The clerk shall give 15 days' notice of the review and its purpose to the parent ~~or~~ and to any ~~the~~ person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review.

Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a), may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every ~~12~~ six months, if the court finds by clear, cogent and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year; and

(2) The placement is stable and continuation of the placement is in the juvenile's best interest; and

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every ~~12~~ six months; and

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from ~~the Department of Social Services, the court counselor, the juvenile, the parent or person standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any public or private agency~~ the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time;

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;

(3) Goals of the foster care placement and the appropriateness of the foster care plan;

(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;

(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;

(5a) An appropriate visitation plan;
(5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile;
(6) When and if termination of parental rights should be considered;
(7) Any other criteria the court deems necessary.

(d) The judge, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or may make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or person standing in loco parentis without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

~~(d1) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

(e) The provisions of ~~subsections (b), (c), and (d) of G.S. 7A-651~~ G.S. 7A-577.1 shall apply to any order entered under this ~~section which continues the foster care placement of a juvenile.~~ section."

Section 8.1. Article 52 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-657.1. Permanency planning hearing.**

(a) In any case where custody is removed from a parent or person standing in loco parentis, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7A-657. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall

make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent and to any person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued, and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the

permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody is restored to a parent, or findings are made in accordance with G.S. 7A-657(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7A-577.1 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;

(2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or

(3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 9. G.S. 7A-659 reads as rewritten:

"§ 7A-659. Post termination of parental rights' placement court review.

(a) The purpose of each placement review is to insure that every reasonable effort is being made to provide for a permanent placement plan for the child who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the child's best interest. At each review hearing the court may consider information from the Department of Social Services, the licensed child-placing agency, the guardian ad litem, the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a

petition brought by any person or agency designated in G.S. 7A-289.24(2) through (5) and a county director or licensed child-placing agency has custody of the child. The court shall conduct reviews every six months thereafter until the child is placed for adoption and the adoption petition is filed by the adoptive parents.

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the child if he is at least 12 years of age, the legal custodian of the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, the guardian ad litem, if any, and any other person or agency the court may specify. Only the child if he is at least 12 years of age, the legal custodian of the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(2) If a guardian ad litem for the child has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the child. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the child's best interest and the efforts of the department or agency to implement such plan;

(2) Whether the child has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the child.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the child.

(e) If the child has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file and the review hearing shall be cancelled, with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed

child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 9.1. Article 24B of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-289.23.1. Pending child abuse, neglect, or dependency hearings.**

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7A-565 shall be served with the petition to terminate parental rights in accordance with G.S. 1A-1, Rule 5."

Section 10. G.S. 7A-289.27 reads as rewritten:

"**§ 7A-289.27. Issuance of summons.**

(a) Except as provided in G.S. 7A-289.26, upon the filing of the petition, the court shall cause a summons to be issued, directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the child;

(2) Any person who has been judicially appointed as guardian of the person of the child;

(3) The custodian of the child appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a child has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General ~~Statutes;~~ Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and

(5) The child, if he or she is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the child to a county department of social services or licensed child-placing agency, nor to any parent who has consented to the adoption of the child by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability even though such parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor child;

(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

(3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;

(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;

(5) Notice that the date, time and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed;

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7A-289.32, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 11. G.S. 7A-289.32 reads as rewritten:

"**§ 7A-289.32. Grounds for terminating parental rights.**

The court may terminate the parental rights upon a finding of one or more of the following:

(1) Repealed by Session Laws 1979, c. 669, s. 2.

(2) The parent has abused or neglected the child. The child shall be deemed to be abused or neglected if the court finds the child to be an abused child within the meaning of G.S. 7A-517(1), or a neglected child within the meaning of G.S. 7A-517(21).

(3) The parent has willfully left the child in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the child. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the child on account of their poverty.

(3a) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence.

(4) The child has been placed in the custody of a county Department of Social Services, a licensed child-placing agency, a child-caring

institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the child although physically and financially able to do so.

(5) One parent has been awarded custody of the child by judicial decree, or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the child, as required by said decree or custody agreement.

(6) The father of a child born out of wedlock has not prior to the filing of a petition to terminate his parental rights:

a. Establish(ed) paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the child pursuant to provisions of G.S. 49-10, or filed a petition for this specific purpose; or

c. Legitimated the child by marriage to the mother of the child; or

d. Provided substantial financial support or consistent care with respect to the child and mother.

(7) That the parent is incapable of providing for the proper care and supervision of the child, such that the child is a dependent child within the meaning of G.S. 7A-517(13), and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(8) The parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the petition. ~~For the purpose of this subdivision, a child may be willfully abandoned by his or her natural father if the mother of the child had been willfully abandoned by and was living separate and apart from the father at the time of the child's birth, although the father may not have known of such birth; but in any event the child must be over the age of three months at the time of the filing of the petition.~~

(9) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(10) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 12. G.S. 48-1-101 is amended by adding a new subdivision to read:

"**§ 48-1-101. Definitions.**

In this Chapter, the following definitions apply:

(1) 'Adoptee' means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.

(2) 'Adoption' means the creation by law of the relationship of parent and child between two individuals.

(3) 'Adult' means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.

(3a) 'Adoption facilitator' means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.

(4) 'Agency' means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. 'Agency' also means a county department of social services in this State.

(5) 'Child' means a son or daughter, whether by birth or adoption.

(5a) 'Criminal history' means a county, State, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public

Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(6) 'Department' means the North Carolina Department of Health and Human Services.

(7) 'Division' means the Division of Social Services of the Department.

(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.

(9) 'Legal custody' of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:

a. Includes the right and the duty to protect, care for, educate, and discipline the individual;

b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and

c. May include the right to have physical custody of the individual.

(10) 'Minor' means an individual under 18 years of age who is not an adult.

(11) 'Party' means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.

(12) 'Physical custody' means the physical care of and control over an individual.

(13) 'Placement' means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:

a. Direct placement by a parent or the guardian of the minor; or

b. Placement by an agency.

(14) 'Preplacement assessment' means a document, whether prepared before or after placement, that contains the information required

by G.S. 48-3-303 and any rules adopted by the Social Services Commission.

(15) 'Relinquishment' means the voluntary surrender of a minor to an agency for the purpose of adoption.

(16) 'Report to the court' means a document prepared in accordance with G.S. 48-2-501, et seq.

(17) 'State' means a state as defined in G.S. 12-3(11).

(18) 'Stepparent' means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

Section 13. G.S. 48-3-203 reads as rewritten:

"**§ 48-3-203. Agency placement adoption.**

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any individual upon request a written statement of the services it provides and of its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection process. This statement must include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter."

Section 14. G.S. 48-3-303 reads as rewritten:

"**§ 48-3-303. Content and timing of preplacement assessment.**

(a) A preplacement assessment shall be completed within 90 days after a request has been accepted.

(b) The preplacement assessment must be based on at least one personal interview with each individual being assessed in the individual's residence and any report received pursuant to subsection (c) of this section.

(c) The preplacement assessment must, after a reasonable investigation, report on the following about the individual being assessed:

(1) Age and date of birth, nationality, race, or ethnicity, and any religious preference;

(2) Marital and family status and history, including the presence of any children born to or adopted by the individual and any other children in the household;

(3) Physical and mental health, including any addiction to alcohol or drugs;

(4) Educational and employment history and any special skills;

(5) Property and income, and current financial information provided by the individual;

(6) Reason for wanting to adopt;

(7) Any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;

(8) Whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, dependent, neglected, abandoned, or delinquent, and the outcome of the proceeding;

(9) Whether the individual has ever been convicted of a crime other than a minor traffic violation;

(10) Whether the individual has located a parent interested in placing a child with the individual for adoption and a brief, nonidentifying description of the parent and the child; and

(11) Any other fact or circumstance that may be relevant to a determination of the individual's suitability to be an adoptive parent, including the quality of the environment in the home and the functioning of any children in the household.

When any of the above is not reasonably available, the preplacement assessment shall state why it is unavailable.

(d) The agency shall conduct an investigation for any criminal record as permitted by law. <u>If a prospective adoptive parent is seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, a county department of social services shall have the individual's criminal history investigated pursuant to G.S. 48-3-309, and based on the criminal history, make a determination pursuant to subsection (e) of this section as to the individual's fitness to have responsibility for the safety and well-being of children.</u>

(e) In the preplacement assessment, the agency shall review the information obtained pursuant to subsections (b), (c), and (d) of this section and evaluate the individual's strengths and weaknesses to be an adoptive parent. The agency shall then determine whether the individual is suitable to be an adoptive parent.

(f) If the agency determines that the individual is suitable to be an adoptive parent, the preplacement assessment shall include specific factors which support that determination.

(g) If the agency determines that the individual is not suitable to be an adoptive parent, the replacement assessment shall state the specific concerns which support that determination. A specific concern is one that reasonably indicates that placement of any minor, or a particular minor, in the home of the individual would pose a significant risk of harm to the well-being of the minor.

(h) In addition to the information and finding required by subsections (c) through (g) of this section, the preplacement assessment must contain a list of the sources of information on which it is based.

(i) The Social Services Commission shall have authority to establish by rule additional standards for preplacement assessments."

Section 15. Effective January 1, 1999, Article 3 of Chapter 48 of the General Statutes is amended by adding the following new section to read:

"**§ 48-3-309. Mandatory preplacement criminal checks of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.**

(a) The department shall ensure that the criminal histories of all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement and, based on the criminal history, a determination is made as to the individual's fitness to have responsibility for the safety and well-being of children. The department shall ensure that all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement for county, state, and federal criminal histories.

(b) A county department of social services may issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services determines pursuant to G.S. 48-3-303(e) that the individual is unfit to have responsibility for the safety and well-being of children based on the criminal history.

(c) The Department of Justice shall provide to the Department of Health and Human Services the criminal history of such a prospective adoptive parent obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(d) At the time of the request for a preplacement assessment or at a subsequent time prior to placement, a prospective adoptive parent whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED PRIOR TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS SEEKING TO ADOPT A MINOR WHO IS IN THE CUSTODY OR PLACEMENT RESPONSIBILITY OF A COUNTY DEPARTMENT OF SOCIAL SERVICES.

'Criminal history' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you are denied a favorable preplacement assessment by a county department of social services as a result of the criminal history check, you may request a review of the assessment pursuant to G.S. 48-3-308(a).

Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the issuance by a county department of social services of an unfavorable preplacement assessment.

Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(e) The department shall notify the prospective adoptive parent's supervising county department of social services of the results of the criminal history check in accordance with the federal and State law regulating the dissemination of the contents of the criminal history file. The department shall not release nor disclose any portion of the prospective adoptive parent's criminal history to the prospective adoptive parent. The department shall also ensure that the prospective adoptive parent is notified of the prospective adoptive parent's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the prospective adoptive parent's right to contest the preplacement assessment of the county department of social services.

A prospective adoptive parent who disagrees with the preplacement assessment of the county department of social services may request a review of the assessment pursuant to G.S. 48-3-308(a).

(f) All the information that the department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the department and those persons authorized under this section to receive the information. The department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There is no liability for negligence on the part of a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(h) The Department of Justice shall perform the State and national criminal history checks on prospective adoptive parents seeking to adopt a minor in the custody or placement responsibility of a county department of social services and shall charge the Department of Health and Human Services a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Health and Human Services, shall bear the costs of implementing this section."

Section 16. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.7. Criminal record checks prior to placement of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.**

The Department of Justice may provide to the Division of Social Services, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The

Division shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 17. The Legislative Research Commission may study changes proposed to the juvenile justice system contained in House Bill 1561 and Senate Bill 1513, 1997 General Assembly. The study may include other issues relevant to child abuse, neglect, and dependency cases. The Commission shall report its findings, recommendations, and any legislative proposals to the 1999 General Assembly.

PART II. ADOPTION AND SAFE FAMILIES ACT - EFFECTIVE JULY 1, 1999.

Section 18. G.S. 7B-101, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. -- Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-

178 and G.S. 14-179; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties;

e. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(1a) Aggravated circumstances. -- Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(2) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(3) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(4) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(5) Court. -- The district court division of the General Court of Justice.

(5a) Court of competent jurisdiction. -- A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(7) Dependent juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(8) Director. -- The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(9) District. -- Any district court district as established by G.S. 7A-133.

(10) Judge. -- Any district court judge.

(11) Judicial district. -- Any district court district as established by G.S. 7A-133.

(12) Juvenile. -- A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

(13) Neglected juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(14) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(15) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(16) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(17) Safe home. -- A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(18) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 19. G.S. 7B-302, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-302. Investigation by director; access to confidential information; notification of person making the report.**

When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department.

When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not

seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the investigation of or the provision for protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of

procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director."

Section 20. G.S. 7B-505, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-505. Place of nonsecure custody.**

A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement in:

(1) A licensed foster home or a home otherwise authorized by law to provide such care; or

(2) A facility operated by the department of social services; or

(3) Any other home or ~~facility~~ facility, including a relative's home approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that the placement is contrary to the best interests of the juvenile. ~~Prior to placement~~ Placement of a juvenile with a relative outside of this ~~State, the placement~~ State must be in accordance with the Interstate Compact on the Placement of Children, Article 38 of this Chapter."

Section 21. G.S. 7B-506, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-506. Hearing to determine need for continued nonsecure custody.**

(a) No juvenile shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the

hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings.

(c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining whether continued custody is warranted.

(d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and should continue in custody, the court shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(e) If the court orders at the hearing required in subsection (a) of this section that the juvenile remain in custody, a subsequent hearing on continued custody shall be held within seven business days of that hearing, excluding Saturdays, Sundays, and legal holidays, and pending a hearing on the merits, hearings thereafter shall be held at intervals of no more than 30 calendar days.

(f) Hearings conducted under subsection (e) of this section may be waived only with the consent of the juvenile's parent, guardian, custodian, or caretaker, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

~~(g) Any order authorizing the continued custody of a juvenile shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued custody when the court finds that continued custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

(h) At each hearing to determine the need for continued custody, the court shall:

(1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide

for specific efforts aimed at determining the identity and location of any missing parent;

(2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative.~~ relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter; and

(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles."

Section 21.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-577.1, as enacted in Part I of this act is recodified as G.S. 7B-506.1 and reads as rewritten:

"**§ 7B-506.1. Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

(1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;

(2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;

(3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and

(5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

(1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;

(2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. ~~7A-517(3a);~~ 7B-101;

(3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or

(4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntarily manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. ~~7A-657.1~~ 7B-906.1 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 22. G.S. 7B-801, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-801. Adjudicatory hearing.

The adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall ~~designate.~~ designate but no later than 60 days from the filing of the petition, unless the judge pursuant to G.S. 7B-803 orders that it be held at a later time. ~~The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.~~ At a

hearing in which a juvenile is alleged to be abused, neglected, or dependent, the judge shall exclude the general public."

Section 23. G.S. 7B-903, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

(1) The court may dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.

(2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:

a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify; or

b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the court, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has

been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

(3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile:

a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the

county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, custodian, or caretaker refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question."

Section 24. G.S. 7B-905, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-905. Dispositional order.**

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition

including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker shall direct that the review hearing required by G.S. 7B-906 be held within ~~six months of~~ 90 days from of the date of the ~~juvenile's placement in custody~~ dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order ~~directing placement of a juvenile in foster care shall also contain:~~ shall comply with the requirements of G.S. 7B-506.1.

~~(1) A finding that the juvenile's continuation in or return to the juvenile's home would be contrary to the juvenile's best interests; and~~

~~(2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~

~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile.~~ Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court."

Section 25. G.S. 7B-906, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-906. Review of custody order.**

(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within ~~six months of~~ 90 days from the date ~~the order was entered,~~ of the dispositional hearing ~~shall conduct a second review within six months after the first review,~~ and shall conduct ~~subsequent reviews at least every year thereafter.~~ a review hearing within six months thereafter. The

director of social services shall make ~~timely requests~~ a timely request to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile ~~matters within six months of the date the order was entered.~~ matters. ~~The director shall make timely requests for calendaring subsequent reviews.~~ The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every ~~12~~ six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every ~~12~~ six months;

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from the ~~department of social services, the juvenile, the parent, the guardian, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will aid it in its review.~~ parent, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.

(2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care.

(3) Goals of the foster care placement and the appropriateness of the foster care plan.
(4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.
(5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent, guardian, custodian, or caretaker.
(5a) An appropriate visitation plan.
(5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.
(6) When and if termination of parental rights should be considered.
(7) Any other criteria the court deems necessary.

(d) The court, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by G.S. 7B-903, including the authority to place the juvenile in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent, guardian, custodian, or caretaker without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision.~~ The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. If at any time custody is restored to a parent, guardian, custodian, or caretaker the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

~~(e) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the court shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

(f) The provisions of ~~subsections (b), (c), and (d) of G.S. 7B-905~~ G.S. 7B-506.1 shall apply to any order entered under this ~~section which continues the foster care placement of a juvenile.~~ section."

Section 25.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-657.1, as enacted in Part I of this act, is recodified as G.S. 7B-906.1 and reads as rewritten:

"§ 7B-906.1. Permanency planning hearing.

(a) In any case where custody is removed from a ~~parent or person standing in loco parentis,~~ parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. ~~7A-657.~~ 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the ~~parent and to any person standing in loco parentis,~~ parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, ~~any person standing in loco parentis,~~ the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

(1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;

(2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;

(3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;

(4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;

(5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;

(6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. ~~7A-585~~ 7B-600 or make any disposition authorized by G.S. ~~7A-647~~ 7B-903 including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody is restored to a parent, or findings are made in accordance with G.S. ~~7A-657(b),~~ 7B-906(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. ~~7A-577.1~~ 7B-506.1 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

(1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;

(2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or

(3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 26. G.S. 7B-907, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-907. Posttermination of parental rights' placement court review.**

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the ~~juvenile, the~~ child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1102(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file, and the review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 26.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-289.23.1, as enacted in Part I of this act, is recodified as G.S. 7B-1101.1 and reads as rewritten:

"**§ 7B-1101.1. Pending child abuse, neglect, or dependency hearings.**

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. ~~7A-565~~ 7B-407 shall be served with the petition to terminate parental rights in accordances with G.S. 1A-1, Rule 5."

Section 27. G.S. 7B-1105, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-1105. Issuance of summons.**

(a) Except as provided in G.S. 7B-1104, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the juvenile;

(2) Any person who has been judicially appointed as guardian of the person of the juvenile;

(3) The custodian of the juvenile appointed by a court of competent jurisdiction;

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General ~~Statutes;~~ Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and

(5) The juvenile, if the juvenile is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor juvenile;

(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

(3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;

(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;

(5) Notice that the date, time, and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7B-1110, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 28. G.S. 7B-1110, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"**§ 7B-1110. Grounds for terminating parental rights.**

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a

reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition. ~~For the purpose of this subdivision, a juvenile may be willfully abandoned by the juvenile's natural father if the mother of the juvenile had been willfully abandoned by and was living separate and apart from the father at the time of the juvenile's birth, although the father may not have known of such birth; but in any event the juvenile must be over the age of three months at the time of the filing of the petition.~~

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

(b) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence."

Section 29. Sections 1 through 9 of this act become effective December 1, 1998, and apply to abuse, neglect, and dependency reports received, juvenile petitions filed, and review hearings commenced on and after that date. Sections 10 and 11 of this act become effective December 1, 1998, and apply to termination of parental rights petitions filed on and after that date. Sections 12 through 16 of this act become effective January 1, 1999, and apply to any placement of a minor who is in the custody or placement responsibility of a county department of social services on and after that date. If the 1997 General Assembly enacts Senate Bill 1260, Sections 1 through 4, 5 through 8, 9, 10, and 11 of this act expire June 30, 1999, and Sections 18 through 28 of this act become effective on July 1, 1999. The remainder of this act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☒ Committee Substitute for
H.B. 1720 A BILL TO BE ENTITLED AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CUSTODY OF ABUSED AND NEGLECTED JUVENILES AND JUVENILES PLACED FOR ADOPTION IN CONFORMANCE WITH FEDERAL ADOPTION AND SAFE FAMILIES ACT REQUIREMENTS, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CHANGES TO THE JUVENILE JUSTICE SYSTEM PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 1299*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 8/10/98
House Committee Substitute Favorable 8/20/98

Short Title: Interbasin Transfer Amendments. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING THE WITHDRAWAL AND TRANSFER OF SURFACE WATERS AND THE STATE WATER SUPPLY PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-211 reads as rewritten:

"**§ 143-211. Declaration of public policy.**

(a) It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

(b) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(c) It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environment and Natural Resources as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environment and Natural Resources be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs."

Section 2. G.S. 143-215.8B(a) reads as rewritten:

"(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

(1) All activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition, and animal operations.

(2) All transfers into and from a river basin that are required to be registered under G.S 143-215.22H."

Section 3. G.S. 143-215.22H reads as rewritten:

"**§ 143-215.22H. Registration of water withdrawals and transfers required.**

(a) Any person who withdraws ~~1,000,000~~ 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers ~~1,000,000~~ 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

(1) The maximum daily amount of the water withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(1a) The monthly average withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.

(3) The monthly average discharge expressed in ~~millions~~ thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of ~~1,000,000~~ 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products.

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at five-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the late registration fee established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars ($5.00) per day for each day the registration is late up to a maximum of five hundred dollars ($500.00). A person who is required to update a registration under this section and fails to do so shall pay a fee of five dollars ($5.00) per day for each day the updated information is late up to a maximum of five hundred dollars ($500.00). A late registration fee shall not be charged to a farmer who submits a registration that pertains to farming operations."

Section 4. G.S. 143-215.22I reads as rewritten:

"**§ 143-215.22I. Regulation of surface water transfers.**

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

(1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.

(2) A description of the proposed uses of the water to be transferred.

(3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.

(4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.

(3) By giving notice by first-class mail to each of the following:

a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.

b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.

c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.

d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.

e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further

indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

(1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation. Local water supply plans that affect the source major river basin shall be used to evaluate the projected future municipal water needs in the source major river basin.

(2a) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the application for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan that has been submitted to the Department in accordance with G.S. 143-355(l).

(3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.

(4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.

(5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(f1) An environmental assessment as defined by G.S. 113A-9(1) shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes. The applicant who petitions the Commission for a certificate under this section shall pay

the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes.

(g) A certificate shall be granted for a water transfer if the applicant establishes and the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that: (i) the benefits of the proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall include a drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment and Natural Resources approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment and Natural Resources based on demonstrated need as set forth in this subsection.

(k) The substantive restrictions and conditions upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government.

(l) When any transfer for which a certificate was issued under this section equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S. 143-355(l). When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(m) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto."

Section 5. G.S. 143-355(l) reads as rewritten:

"(l) Each unit of local government that provides public water ~~services~~ service or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government shall include in local water supply plans all information that is readily available to them. ~~However this subsection shall be construed to require the preparation of local water supply plans only to the extent that technical assistance is made available to units of local government from the Department.~~ Plans shall include present and projected population, industrial development, ~~and~~ water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by the unit(s) of local government."

Section 6. Article 1 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-8.1. Surface water transfers.**

An environmental assessment shall be prepared for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether

an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of this Article."

Section 7. By 1 January 1999, each unit of local government that provides public water service or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department in compliance with G.S. 143-355(l). By 1 January 2000, the Department of Environment and Natural Resources shall develop a State water supply plan in compliance with G.S. 143-355(m). The Department shall identify in the plan any area in the State that appears to face existing or future water shortages, conflicts among water users, or depletion of water resources and shall review the plan at least every five years thereafter to determine whether any other areas are facing these problems within a 10-year period from the date of review.

Section 8. Section 3 of this act becomes effective 1 March 2000. Any person who is required to register a water withdrawal or transfer as a result of the amendments to G.S. 143-215.22H made by Section 3 of this act shall provide the information required by G.S. 143-215.22H(a) on the basis of water withdrawn or transferred during the 1999 calendar year. All other sections of this act become effective 1 October 1998 and apply to any application for a certificate submitted pursuant to G.S. 143-215.22I, as amended by Section 4 of this act, on or after that date.

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MEMORANDUM

September 1, 1998

TO: House Committee on Finance

FROM: Rick Zechini, House Environment Committee Counsel
Jeff Hudson, House Environment Committee Counsel

SUBJECT: Senate Bill 1299 (Interbasin Transfer Amendments), Third Edition

Chapter 483 of the 1997 Session Laws (1997 Studies Bill) authorized, and Chapter 524 of the 1997 Session Laws (Amend Interbasin Transfers) directed, the Environmental Review Commission (ERC) to study issues related to interbasin transfers. On December 22, 1997, the ERC heard a presentation by the Division of Water Resources in the Department of Environment and Natural Resources on the transfer of surface water between river basins in the State. During the May 4, 1998 meeting of the ERC, Senator Betsy Cochrane presented a legislative proposal that would amend the statutes governing interbasin transfers and water use planning. This proposal was recommended by the ERC and introduced by Senator Cochrane in the Senate as Senate Bill 1299 and by Representative Dewey Hill in the House of Representatives as House Bill 1473.

Senate Bill 1299 (Interbasin Transfer Amendments), Third Edition

Section 1 amends the public policy statement in the water and air resources statutes to provide that it is the public policy of the State to maintain, protect, and enhance water quality within North Carolina and that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegredation policy set out in 40 Code of Federal Regulations Section 131.12 (July 1, 1997 edition) and the statewide antidegredation policy adopted pursuant to the federal regulations.

Section 2 requires the Environmental Management Commission (Commission) to consider all transfers into and from a river basin that are required to be registered under G.S. 143-215.22H in developing and implementing basinwide water quality management plans.

Section 3 reduces the threshold volume of a withdrawal or transfer requiring registration to 100,000 gallons per day from 1,000,000 gallons per day. A person withdrawing 100,000 gallons per day or more from the surface or groundwaters of the State or who transfers 100,000 gallons per day

or more from one river basin to another must register the withdrawal or transfer with the Commission.

Section 3 also provides that the registration requirement does not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products.

Section 4 makes various amendments to G.S. 143-215.22I (Registration of Surface Water Transfers) that:

- Direct the Commission, in determining whether to issue a certificate for a transfer, to consider the local water supply plans that affect the source major river basin to evaluate the projected future municipal water needs in the source major river basin.
- Require the Commission to consider the cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the application for a certificate is occurring, is authorized, or is projected in any local water supply plan that has been submitted to the Department of Environment and Natural Resources (DENR).
- Require the preparation of an environmental assessment for any petition for a transfer certificate. The determination of whether an environmental impact statement is required shall be made in accordance with the provisions of the State Environmental Policy Act. An applicant who petitions the Commission for a certificate under this section must pay the cost of special studies necessary to comply with the State Environmental Policy Act.
- Require that a certificate must include a drought management plan that specifies how the transfer will be managed to protect the source river basin during drought conditions.
- Require that when a transfer for which a certificate was issued equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant must submit to DENR a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then the detailed plan on future water needs shall be an amendment to the local water supply plan. When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant must begin implementation of the plan.
- Provide that it is the public policy of the State to maintain, protect, and enhance water quality within North Carolina and that the cumulative impacts of transfers from a source river basin shall not result in a violation of the antidegredation policy set out in 40 Code of Federal Regulations Section 131.12 (July 1, 1997 edition) and the statewide antidegredation policy adopted pursuant thereto.

Section 5 repeals language that provides that units of local government are required to prepare local water supply plans only to the extent that technical assistance is available from DENR. In addition, Section 5 adds the requirement that a revised local water supply plan must include the current and anticipated reliance by the local government unit on surface water transfers.

Section 6 requires the preparation of an environmental assessment for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of the State Environmental Policy Act.

Section 7 requires each unit of local government that provides public water service or that plans to provide public water service to prepare, either individually or together with other units of local government, a local water supply plan and submit it to DENR by January 1, 1999. Section 7 also requires DENR to develop a State water supply plan by January 1, 2000. DENR must identify in the plan any area in the State that appears to face existing or future water shortages, conflicts among water users, or depletion of water resources and must review the plan at least every five years thereafter to determine whether any other areas are facing these problems within a ten year period from the date of review.

Section 8 makes Section 3 of this act effective March 1, 2000. A person who is required to register a water withdrawal or transfer as a result of the amendments to G.S. 143-215.22H(a) made by Section 3 of this act must provide the information required by G.S. 143-215.22H(a) on the basis of water withdrawn or transferred during the 1999 calendar year. All other sections of this act become effective October 1, 1998, and apply to any application for a certificate submitted pursuant to G.S. 143-215.22I, as amended by Section 4 of this act, on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1299 (Third Edition)

SHORT TITLE: Interbasin Transfer Amendments

SPONSOR(S): Senators Cochrane; Albertson, Carpenter, East, Horton, Kinnaird, Martin of Pitt, Odom, and Phillips

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
Division of Water Resources - Receipts	-	$15,000	$500	$500	$500

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources; Division of Water Resources

EFFECTIVE DATE: Section 3 of the bill is effective March 1, 2000. All other sections are effective October 1, 1998.

BILL SUMMARY: S 1299. INTERBASIN TRANSFER AMENDMENTS (=H 1473). *TO AMEND THE LAWS REGARDING THE WITHDRAWAL AND TRANSFER OF SURFACE WATERS AND THE STATE WATER SUPPLY PLAN.* Amends GS 143-211 to declare state policy that cumulative impact of transfers from source river basin not degrade water quality of that basin or diminish its assimilative capacity. Amends GS 143-215.8B to require Environmental Management Commission (EMC), in developing basinwide water quality plans, to consider cumulative impacts of all transfers into and out of basin. Amends GS 143-215.22H, which requires registration of water basin withdrawals or transfers, to reduce from 1 million gallons per day to 100,000 gallons per day the threshold for registering. Amends GS 143-215.22I (regulating surface water transfers) to: (1) require EMC, in determining whether to issue certificate for transfer, to consider local water supply plans in source major river basin and use them to evaluate projected future municipal water needs in that basin; (2) require environmental assessment under GS 113A-8.1 (which is enacted by this bill) for any petition for certificate under that section; (3) require any certificate under GS 113-8.1 to include drought management plan; and (4) direct any applicant with certificate, when transfers equal 80% of maximum

allowed under certificate, to submit to Department of Environment and Natural Resources (DENR) plan stating how applicant intends to address future foreseeable water needs, and to require implementation of plan when transfers equal 90% of maximum. Amends GS 143-355(l) to require that local government water supply plans include current and anticipated reliance on surface water transfers; requires such plans by Jan. 1, 1999. Directs DENR to develop state water supply plan by Jan. 1, 2000. Effective October 1, 1998. [1]

SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE SUBSTITUTE:
The Senate committee substitute makes the following changes to 1st edition. (1) Adds to statement of state's public policy, in GS 143-211(b) and 143-215.22I(m), that cumulative impact of transfers from source river basin must not result in violation of antidegradation policy set out in 40 CFR sec. 131.12 and the statewide antidegradation policy adopted pursuant to that federal policy. (2) Amends GS 143-215.8B(a) to require EMC, in developing water quality management plans for major river basins in state, to consider impacts of all transfers into and from a river basin that must be registered under GS 143-215.22H. (3) Adds GS 143-215.22H(b1) to exempt from specified registration requirements person who withdraws or transfers less than 1 million gallons per day of water for activities related to agriculture. (4) Adds GS 143-215.22I(f)(2a) to add, as factor that EMC must consider in deciding whether to issue a certificate for a water transfer, the cumulative effect on the river basin of any water transfer or use that is already occurring, is authorized under GS 143-215.11I, or is projected in any local water supply plan submitted to DENR. Revises proposed GS 143-215.22I(f1) to make clear that applicant who petitions EMC for water transfer certificate must pay the cost of special studies necessary to comply with GS Chapter 113A, Article 1 (Environmental Policy Act provisions concerning assessments of environmental impacts). Rewrites proposed GS 143-215.22I(l) to provide that if applicant must submit plan regarding future water needs to DENR and applicant must have local water supply plan, then plan submitted to DENR must be amendment to local water supply plan required by GS 143-355(l). (5) Requires that DENR, in its state water supply plan, identify any areas of state that face water shortages, conflicts among water users, or depletion of water resources; and that it review plan every five years thereafter to determine whether any other areas are facing such problems within 10 years from date of review. (6) Makes amendments to GS 143-215.22H (registration of water withdrawals and transfers) effective March 1, 2000. Requires that person who must register withdrawal or transfer as result of amendments to GS 143-215.22H provide information required by subsection (a) of that statute on basis of water withdrawn or transferred during 1999. Other provisions of act are effective Oct. 1, 1998. [2]

HOUSE ENVIRONMENT COMMITTEE SUBSTITUTE:
The House committee substitute makes technical changes only.[3]

ASSUMPTIONS AND METHODOLOGY:
Current law requires water withdrawals and transfers from the State's surface or groundwaters of 1,000,000 gallons per day (gpd) or more to be registered with the Environmental Management

[1] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, Vol. 1998, May 25, 1998
[2] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, Vol. 1998, August 10, 1998
[3] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, Vol. 1998, August 20, 1998

Commission. The Division of Water Resources employs an Engineer I who spends 25% of his time managing approximately 380 registered withdrawals for both farming and non-farming operations. Farming operations include crop irrigation, fish farming, and animal farming; non-farming operations include public water systems, industries, and golf courses. There is a $50 one time registration fee for water withdrawals for non-farming operations. Farming operations are exempted by law from this fee, but are still required to submit registrations to the department. Applicants who update their water withdrawal/transfer registration are not required to submit additional registration fees, but are subject to late fees pursuant to G.S. 143-215.22H(e).

As currently written, Senate Bill 1299 proposes to change the registration threshold requirement for water basin withdrawals and transfers from 1,000,000 gallons per day (gpd) to 100,000 gpd. The Division of Water Resources estimates that lowering the threshold could potentially add over 2,300 new water users, both farming (2,000) and non-farming (300) to the registration directory. The bill further adds language to G.S. 143-215.22H(a)(3) to exempt farming-related activities that withdraw or transfer less that 1,000,000 gpd of water from registration requirements.

The estimated 300 non-farming operations would begin registration March 1 of FY 1999-2000. These operations would provide a maximum of $15,000 in revenues to offset any new costs associated with registration requirements (300 non-farming operations X $50 registration fee) in the first year, assuming that all new non-farming operations register between March 1 and June 30 of 2000. Any operation that initiates new transfers or withdrawals of 100,000 gpd or more must register within six months of initiating a withdrawal or transfer. It is anticipated that in each subsequent fiscal year, an additional 10 non-farming registrations will come on line, providing $500 in revenues (10 registrations X $50 registration fee).

Additional Changes

Under the proposed changes to G.S. 143-215.22I, applicants who petition the Environmental Management Commission for a certificate to transfer water from one river basin to another must pay the costs of an environmental assessment. The changes proposed under this section conform to current departmental practices. DENR utilizes existing resources to cover the costs associated with environmental assessments, and asks certificate petitioners to cover costs incurred for major studies. The cost would vary from applicant to applicant depending upon the technical nature of the study required.

TECHNICAL CONSIDERATIONS: None

SOURCES OF INFORMATION: Department of Environment and Natural Resources, Division of Water Resources

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Jennifer L. Herrera

APPROVED BY:
DATE: August 27, 1998

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1299

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1299V3-ART-001.01

Date September 1, 1998

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Representative Cole

moves to amend the bill on page 7, line 18, by rewriting that line to read:

"thereto. It is also the public policy of this State that regulation of the transfer of surface waters from one river basin to another be implemented on a uniform basis throughout the State. It is therefor the public policy of this State that a transfer of water from one river basin to another for which a certificate is either issued or not required under this section not be subject to regulation or limitation by a local ordinance or by contract. A local ordinance or contract provision that regulates or limits a transfer of surface water from one river basin to another is void.'".

SIGNED Nelson Cole
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1299*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 8/10/98
House Committee Substitute Favorable 8/20/98
Proposed House Committee Substitute S1299-PCS8856-RT006

Short Title: Interbasin Transfer Amendments. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING THE WITHDRAWAL AND TRANSFER OF SURFACE WATERS AND THE STATE WATER SUPPLY PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-211 reads as rewritten:

"**§ 143-211. Declaration of public policy.**

(a) It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

(b) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(c) It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environment and Natural Resources as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environment and Natural Resources be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs."

Section 2. G.S. 143-215.8B(a) reads as rewritten:

"(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

(1) All activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition, and animal operations.

(2) All transfers into and from a river basin that are required to be registered under G.S 143-215.22H."

Section 3. G.S. 143-215.22H reads as rewritten:

"**§ 143-215.22H. Registration of water withdrawals and transfers required.**

(a) Any person who withdraws ~~1,000,000~~ 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers ~~1,000,000~~ 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

(1) The maximum daily amount of the water withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(1a) The monthly average withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.

(2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.

(3) The monthly average discharge expressed in ~~millions~~ thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of ~~1,000,000~~ 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products.

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at five-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the late registration fee established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars ($5.00) per day for each day the registration is late up to a maximum of five hundred dollars ($500.00). A person who is required to update a registration under this section and fails to do so shall pay a fee of five dollars ($5.00) per day for each day the updated information is late up to a maximum of five hundred dollars ($500.00). A late registration fee shall not be charged to a farmer who submits a registration that pertains to farming operations."

Section 4. G.S. 143-215.22I reads as rewritten:

"**§ 143-215.22I. Regulation of surface water transfers.**

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

(1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.

(2) A description of the proposed uses of the water to be transferred.

(3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.

(4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.

(3) By giving notice by first-class mail to each of the following:

a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.

b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.

c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.

d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.

e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further

indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

(1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation. Local water supply plans that affect the source major river basin shall be used to evaluate the projected future municipal water needs in the source major river basin.

(2a) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the application for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan that has been submitted to the Department in accordance with G.S. 143-355(l).

(3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.

(4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.

(5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(f1) An environmental assessment as defined by G.S. 113A-9(1) shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes. The applicant who petitions the Commission for a certificate under this section shall pay

the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes.

(g) A certificate shall be granted for a water transfer if the applicant establishes and the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that: (i) the benefits of the proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall include a drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment and Natural Resources approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment and Natural Resources based on demonstrated need as set forth in this subsection.

(k) The substantive restrictions and conditions upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government.

(l) When any transfer for which a certificate was issued under this section equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S. 143-355(l). When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(m) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto. It is also the public policy of this State that regulation of the transfer of surface waters from one river basin to another be implemented on a uniform basis throughout the State. It is therefore the public policy of this State that a transfer of water from one river basin to another for which a certificate is either issued or not required under this section not be subject to regulation or limitation by a local ordinance or by contract. A local ordinance or contract provision that regulates or limits a transfer of surface water from one river basin to another is void."

Section 5. G.S. 143-355(l) reads as rewritten:

"(l) Each unit of local government that provides public water ~~services~~ service or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government shall include in local water supply plans all information that is readily available to them. ~~However this subsection shall be construed to require the preparation of local water supply plans only to the extent that technical assistance is made available to units of local government from the Department.~~ Plans shall include present and projected population, industrial development, ~~and~~ water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit on surface water transfers as defined by G.S.

143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by the unit(s) of local government."

Section 6. Article 1 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-8.1. Surface water transfers.**

An environmental assessment shall be prepared for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of this Article."

Section 7. By 1 January 1999, each unit of local government that provides public water service or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department in compliance with G.S. 143-355(l). By 1 January 2000, the Department of Environment and Natural Resources shall develop a State water supply plan in compliance with G.S. 143-355(m). The Department shall identify in the plan any area in the State that appears to face existing or future water shortages, conflicts among water users, or depletion of water resources and shall review the plan at least every five years thereafter to determine whether any other areas are facing these problems within a 10-year period from the date of review.

Section 8. Section 3 of this act becomes effective 1 March 2000. Any person who is required to register a water withdrawal or transfer as a result of the amendments to G.S. 143-215.22H made by Section 3 of this act shall provide the information required by G.S. 143-215.22H(a) on the basis of water withdrawn or transferred during the 1999 calendar year. All other sections of this act become effective 1 October 1998 and apply to any application for a certificate submitted pursuant to G.S. 143-215.22I, as amended by Section 4 of this act, on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☒ Committee Substitute for

S.B. 1299 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS REGARDING THE WITHDRAWAL AND TRANSFER OF SURFACE WATERS AND THE STATE WATER SUPPLY PLAN.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill (# 2), ☐ ~~which changes the title~~, unfavorable as to Senate committee substitute bill. # 1.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1552
Finance Committee Substitute Adopted 7/15/98
House Committee Substitute Favorable 8/5/98
PROPOSED HOUSE FINANCE COMMITTEE SUBSTITUTE
S1552-CSRB-8/31

Short Title: Notary Public Changes. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE NOTARY PUBLIC ACT, TO EXEMPT SOME MAPS FROM THE CERTIFICATION REQUIREMENT, TO AUTHORIZE THE SECRETARY OF STATE TO AUTHENTICATE DOCUMENTS, AND TO GIVE RELIEF TO CORPORATIONS AND LIMITED LIABILITY COMPANIES THAT HAVE BEEN ADMINISTRATIVELY DISSOLVED OR MAY BE ADMINISTRATIVELY DISSOLVED BECAUSE OF FAILURE TO FILE A CORPORATE ANNUAL REPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-2 reads as rewritten:

"**§ 10A-2. Purposes.**

This Chapter shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery."

Section 2. G.S. 10A-3 reads as rewritten:

"**§ 10A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Acknowledgment. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily.

(2) Commission. -- The written authority to perform a notarial act.

(2a) Director. -- The Director of the Notary Section of the Department of the Secretary of State.

(3) Notarial act, notary act, and notarization. -- Any act that a notary is empowered to perform under G.S. 10A-9.

(4) Notary public and notary. -- A person commissioned to perform notarial acts under this Chapter.

(5) Oath or affirmation. -- A notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary, with reference made to a Supreme Being for an oath and with no reference made to a Supreme Being for an affirmation.

(6) Official misconduct. -- Either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary ~~of State~~ to be negligent or against the public interest.

(7) Personal knowledge of identity. -- Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(8) Satisfactory evidence of identity. -- Identification of an individual based on either of the following:

a. One current document issued by a federal or state government with the individual's photograph.

b. Identification by a credible person who is personally known to the notary and who has personal knowledge of the individual's identity.

(8a) Secretary. -- The Secretary of State.

(9) Verification or proof. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has, in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document."

Section 3. G.S. 10A-4 reads as rewritten:

"**§ 10A-4. Commissioning.**

(a) Except as provided in subsection (c) of this section, the Secretary ~~of State~~ shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary ~~of State~~ and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary ~~of State~~ that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary ~~of State~~ and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. ~~The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.~~

(6) Pay a nonrefundable fee of twenty-five dollars ($25.00).

(c) The Secretary ~~of State~~ may deny an application for commission or recommission as a notary if any of the following applies to the applicant:

(1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.

(1a) The applicant has been convicted of a felony and the applicant's rights have not been restored.

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.

(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

~~(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the Secretary of State. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:~~

~~(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the Secretary of State.~~

~~(2) Have six months of active experience as a notary public.~~

~~(3) Maintain a current commission as a notary public.~~

~~(4) Purchase the current notary public guidebook.~~

~~Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant and deputy clerks of court are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.~~

~~(e) Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of State.~~"

Section 4. G.S. 10A-7 reads as rewritten:

"**§ 10A-7.** ~~**Fee with commission application.**~~ **Instructor's certification.**

~~Every applicant for a notarial commission shall pay to this State a nonrefundable fee of twenty-five dollars ($25.00). Every applicant for recommissioning shall pay to this State a nonrefundable fee of twenty-five dollars ($25.00).~~

(a) The course of study required by G.S. 10A-4(b) shall be taught by an instructor certified in accordance with rules adopted by the Secretary. An instructor must meet the following

requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the Director or other person approved by the Secretary.

(2) Have six months of active experience as a notary public.

(3) Maintain a current commission as a notary public.

(4) Purchase the current notary public guidebook.

(5) Pay a nonrefundable fee of fifty dollars ($50.00).

(b) Certification to teach a course of study for notaries public shall be effective for two years. A certification may be renewed by passing a recertification course taught by the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars ($50.00).

(c) The following people may be certified to teach a course of study for notaries public without meeting the requirements of subdivisions (a)(2), (a)(3), and (a)(5), and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

(1) Registers of deeds.

(2) Clerks of court.

(3) The Director."

Section 5. G.S. 10A-9(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.

(2) The readable appearance of the notary's name, either from the notary's signature or ~~otherwise.~~ from the notary's typed, printed, or embossed name near the signature.

(3) The clear and legible appearance of the notary's stamp or seal.

(4) A statement of the date the notary's commission expires."

Section 6. G.S. 10A-10 reads as rewritten:

"**§ 10A-10. Fees of notaries.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature.

(2) For oaths or affirmations without a verification or proof, ~~two dollars ($2.00)~~ three dollars ($3.00) per person.

(3) For verifications or proofs, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature."

Section 7. G.S. 10A-11 reads as rewritten:

"**§ 10A-11. Notarial stamp or seal.**

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words "North Carolina" or an abbreviation thereof, and the words "Notary Public". The official stamp or seal, as it appears on a document, may contain a permanently imprinted or a handwritten expiration date of the notary's commission. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it. However, upon revocation, the notary shall immediately surrender the stamp or seal to the ~~Secretary of State.~~ Secretary."

Section 8. G.S. 10A-14 reads as rewritten:

"**§ 10A-14. ~~Clerks are notaries ex officio and may certify own seals.~~ Notaries ex officio.**

(a) The clerks of the superior court ~~and their assistants and deputies~~ may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts only under the seals of their respective courts. Assistant and deputy clerks of superior court, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective courts:

(1) Oaths and affirmations.

(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10A-4(b), assistant and deputy clerks of superior court may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective courts. A course of study attended only by assistant and deputy clerks of superior court may be taught at any mutually convenient location agreed to by the Secretary and the Administrative Officer of the Courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts only under the seals of their respective offices. Assistant and deputy register of deeds, by

virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective offices:

(1) Oaths and affirmations.

(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10A-4(b), assistant and deputy register of deeds may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective offices. A course of study attended only by assistant and deputy registers of deeds may be taught at any mutually convenient location agreed to by the Secretary and the North Carolina Association of Registers of Deeds.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Office of the Secretary of State and may certify a notarial act performed in that capacity under the seal of the Secretary of State.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10A-10. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed.

(e) Nothing in this section shall authorize a person to act as a notary public other than in the performance of the official duties of the person's office unless the person complies fully with the requirements of G.S. 10A-4."

Section 9. G.S. 10A-15 is repealed.

Section 10. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is ~~erroneously~~ stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation

"N. C.", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for ~~Georgia,~~ another state are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~June 1, 1997.~~ September 1, 1998."

Section 11. G.S. 47-30(m) reads as rewritten:

"(m) ~~Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor.~~ Maps attached to deeds or other instruments and submitted for recording in that form must be no larger than 8 1/2 inches by 14 inches and comply with either this subsection or subsection (n) of this section. Such a map shall either (i) have ~~an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors~~ the original signature of a registered land surveyor and the surveyor's seal as approved by the State Board of Registration for Professional Engineers and Land Surveyors, or (ii) be a copy of a map, already on file in the public ~~record,~~ records, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors."

Section 12. G.S. 47-30(n) reads as rewritten:

"(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for ~~inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY."~~ recording in that form for illustrative purposes only if it meets both of the following requirements:

(1) It is no larger than 8 1/2 inches by 14 inches.

(2) It is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.""

Section 13. G.S. 47-30.2(c) reads as rewritten:

"(c) A map or plat must be presented to the Review Officer unless one or more of the following conditions are applicable:

(1) ~~the~~ The certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c.

(2) The map or plat is exempt from the requirements of G.S. 47-30 pursuant to G.S. 47-30(j) or (l).

(3) The map is an attachment that is being recorded pursuant to G.S. 47-30(n)."

Section 14. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 34.

"Certificates of Authentication.

"**§ 66-270. Authority of Secretary of State to authenticate documents.**

The Secretary, or the Secretary's designee, may sign and issue a certificate of authentication for a document that has been executed or issued in this State so that it can be recognized in a foreign jurisdiction. The certificate may be issued under the seal of the Department of the Secretary of State or under the Great Seal of the State of North Carolina. The Secretary may adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

"**§ 66-271. Definitions.**

The following definitions apply in this Article:

(1) Authentication. -- Certification of the genuineness of an official's signature, seal, or position within the State of North Carolina so the document can be recognized in a foreign jurisdiction.

(2) Department. -- The Department of the Secretary of State.

(3) Foreign jurisdiction. -- A jurisdiction outside the State of North Carolina.

(4) Foreign official. -- An individual authorized by a foreign jurisdiction to attest to the genuineness of a document or to the position of an individual within that foreign jurisdiction.

(5) Notary public. -- Defined in G.S. 10A-3.

(6) Official. -- An individual who is a notary public, an individual who is elected or appointed to hold an office in State government, or an individual who

is elected or appointed to hold an office in a local governmental unit of this State.

(7) Secretary. -- The Secretary of State.

(8) Specimen. -- A record of a person's signature, seal, or position as an official within the State maintained in the Department.

"**§ 66-272. Certificate of authentication.**

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of the official's seal and signature on file in the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication may be placed on the document itself, if space is available, or by appending it to the document on a separate sheet.

"**§ 66-273. Prerequisites for authentication.**

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.

(2) All dates must follow in chronological order on all certifications.

(3) All acknowledgments to be authenticated by the Secretary shall be in English or accompanied by a certified or notarized English translation.

(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

"**§ 66-274. Limitations on authentication.**

(a) The Secretary shall not issue a certificate of authentication for a document if the Secretary has cause to believe that the certificate is desired for an unlawful or improper purpose. The Secretary may examine not only the document for which a certificate is requested, but also any documents to which the previous seals or other certifications may have been affixed by other authorities. The Secretary may request any additional information that may be necessary to establish that the requested certificate will serve the interests of justice and is not contrary to public policy, including a

certified or notarized English translation of document text in a foreign language.

(b) The Secretary shall not issue a certificate of authentication for any one or more of the following:

(1) A seal or signature that cannot be authenticated by either the Secretary or another official.

(2) A seal or signature of a foreign official.

(3) A facsimile, photostat, photographic or other reproduction of a signature or seal.

(c) The Secretary may not include within the certificate of authentication any statement that is not within the Secretary's power or knowledge to authenticate. The Secretary may not certify that a document has been executed or certified in accordance with the law of any particular jurisdiction or that a document is a valid document in a particular jurisdiction.

"**§ 66-275. Other methods of authentication not precluded.**

Nothing in this Article shall preclude or invalidate any other method that is provided by statute or common law for certifying or exemplifying the authenticity of a document or preclude the recognition in a foreign jurisdiction of a document whose authenticity is so certified or exemplified."

Section 15. Part 2 of Article 16 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-16-22.1. Curative provision.**

(a) A corporation that is delinquent in filing an annual report for any one or more of the years 1991 through 1997 may satisfy the annual report requirement and avoid administrative dissolution or revocation of its certificate of authority by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the current annual report filing fee provided in G.S. 55-1-22.

(3) Pay the annual report filing fee for each delinquent annual report.

(b) A corporation that has been issued a certificate of administrative dissolution under G.S. 55-14-21 or a certificate of revocation of authority under G.S. 55-15-31 for failure to file an annual report for any one or more of the years 1991 through 1997 may be granted a certificate of reinstatement or a new certificate of authority by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the current annual report filing fee provided in G.S. 55-1-22.

(3) Pay the annual report filing fee for each delinquent annual report.
(4) File an application for reinstatement or an application for a new certificate of authority, whichever is appropriate. The filing fee is waived.
(5) Comply with G.S. 55-4-01.

The certificate of reinstatement and the certificate of authority, when it is effective, relates back to and takes effect as of the date of the administrative dissolution or of the certificate of revocation of authority. The corporation may resume carrying on its business as if the administrative dissolution or certificate of revocation of authority had never occurred, subject to the rights of any persons who reasonably relied to their prejudice upon the certificate of dissolution or the certificate of revocation of authority.

(c) The relief provided by this section shall not be available to a corporation that receives a certificate of dissolution or a certificate of authority revoked for a reason other than the failure to file an annual report under G.S. 55-14-20 or G.S. 55-15-30."

Section 16. Article 6 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-6-03.1. Curative provision.**

(a) A limited liability company that is delinquent in filing an annual report for any one or more of the years 1993 through 1997 may satisfy the annual report requirement and avoid administrative dissolution by completing all of the following on or before November 30, 1999:

(1) File a current annual report.
(2) Pay the annual report filing fee provided in G.S. 57C-1-22.

(b) A limited liability company that has been issued a certificate of administrative dissolution under G.S. 57C-6-03 for failure to file an annual report for any one or more of the years 1993 through 1997 may be granted a certificate of reinstatement by completing all of the following on or before November 30, 1999:

(1) File a current annual report.
(2) Pay the annual report filing fee provided for in G.S. 57C-1-22.
(3) File an application for reinstatement. The filing fee is waived.
(4) Comply with G.S. 57C-2-30.

The certificate of reinstatement, when it is effective, relates back to and takes effect as of the date of the administrative dissolution. The limited liability company may resume carrying on its business as if the administrative dissolution of authority had never occurred, subject to the rights of any persons who reasonably relied to their prejudice upon the certificate of dissolution.

(c) The relief provided by this section shall not be available to a limited liability company that receives a certificate of dissolution for a reason other than the failure to file an annual report under G.S. 57C-6-03."

Section 17. Sections 10, 15, 16, and 17 of this act are effective when they become law. Sections 15 and 16 of this act are repealed December 1, 1999. Sections 11 and 12 of this act become effective December 1, 1998. The remainder of this act becomes effective September 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1552
Finance Committee Substitute Adopted 7/15/98
House Committee Substitute Favorable 8/5/98
PROPOSED HOUSE FINANCE COMMITTEE SUBSTITUTE
S1552-CSRB-8/21

Short Title: Notary Public Changes. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE NOTARY PUBLIC ACT, TO EXEMPT SOME MAPS FROM THE CERTIFICATION REQUIREMENT, TO AUTHORIZE THE SECRETARY OF STATE TO AUTHENTICATE DOCUMENTS, AND TO GIVE RELIEF TO CORPORATIONS AND LIMITED LIABILITY COMPANIES THAT HAVE BEEN ADMINISTRATIVELY DISSOLVED OR MAY BE ADMINISTRATIVELY DISSOLVED BECAUSE OF FAILURE TO FILE A CORPORATE ANNUAL REPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-2 reads as rewritten:

"**§ 10A-2. Purposes.**

This Chapter shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery."

Section 2. G.S. 10A-3 reads as rewritten:

"**§ 10A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Acknowledgment. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily.

(2) Commission. -- The written authority to perform a notarial act.

(2a) Director. -- The Director of the Notary Section of the Department of the Secretary of State.

(3) Notarial act, notary act, and notarization. -- Any act that a notary is empowered to perform under G.S. 10A-9.

(4) Notary public and notary. -- A person commissioned to perform notarial acts under this Chapter.

(5) Oath or affirmation. -- A notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary, with reference made to a Supreme Being for an oath and with no reference made to a Supreme Being for an affirmation.

(6) Official misconduct. -- Either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary ~~of State~~ to be negligent or against the public interest.

(7) Personal knowledge of identity. -- Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(8) Satisfactory evidence of identity. -- Identification of an individual based on either of the following:

a. One current document issued by a federal or state government with the individual's photograph.

b. Identification by a credible person who is personally known to the notary and who has personal knowledge of the individual's identity.

(8a) Secretary. -- The Secretary of State.

(9) Verification or proof. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has, in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document."

Section 3. G.S. 10A-4 reads as rewritten:

"**§ 10A-4. Commissioning.**

(a) Except as provided in subsection (c) of this section, the Secretary ~~of State~~ shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary ~~of State~~ and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary ~~of State~~ that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary ~~of State~~ and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. ~~The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.~~

(c) The Secretary ~~of State~~ may deny an application for commission or recommission as a notary if any of the following applies to the applicant:

(1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.

(1a) The applicant has been convicted of a felony and the applicant's rights have not been restored.

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.

(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the ~~Secretary of State.~~ Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the ~~Secretary of State.~~ Secretary.

(2) Have six months of active experience as a notary public.

(3) Maintain a current commission as a notary public.

(4) Purchase the current notary public guidebook.

(5) Pay a nonrefundable fee of fifty dollars ($50.00).

~~Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant and deputy clerks of court are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.~~ Certification to teach a course of study shall be effective for two years. A certification may be renewed by passing a recertification course taught by the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars ($50.00).

(e) ~~Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of State.~~ The following people may be certified to teach a course of study required under subsection (b) of this section without meeting the requirements of subdivisions (d)(2), (d)(3), and (d)(5), and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

(1) Registers of deeds.

(2) Clerks of court.

(3) The Director."

Section 4. G.S. 10A-9(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.

(2) The readable appearance of the notary's name, either from the notary's signature or ~~otherwise.~~ from the notary's typed, printed, or embossed name near the signature.

(3) The clear and legible appearance of the notary's stamp or seal.

(4) A statement of the date the notary's commission expires."

Section 5. G.S. 10A-10 reads as rewritten:

"**§ 10A-10. Fees of notaries.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature.

(2) For oaths or affirmations without a verification or proof, ~~two dollars ($2.00)~~ three dollars ($3.00) per person.

(3) For verifications or proofs, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature."

Section 6. G.S. 10A-11 reads as rewritten:

"**§ 10A-11. Notarial stamp or seal.**

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words "North Carolina" or an abbreviation thereof, and the words "Notary Public". The official stamp or seal, as it appears on a document, may contain a permanently imprinted or a handwritten expiration date of the notary's commission. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it. However, upon revocation, the notary shall immediately surrender the stamp or seal to the ~~Secretary of State.~~ Secretary."

Section 7. G.S. 10A-14 reads as rewritten:

"**§ 10A-14. ~~Clerks are notaries ex officio and may certify own seals.~~ Notaries ex officio.**

(a) The clerks of the superior court ~~and their assistants and deputies~~ may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts under the seals of their respective courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts under the seals of their respective offices.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Office of the Secretary of State and may certify a notarial act performed in that capacity under the seal of the Secretary of State.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10A-10. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed."

Section 8. G.S. 10A-15 is repealed.

Section 9. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is ~~erroneously~~ stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "N. C.", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for ~~Georgia,~~ another state are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~June 1, 1997.~~ August 1, 1998."

Section 10. G.S. 47-30(m) reads as rewritten:

"(m) ~~Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor.~~ Maps attached to deeds or other instruments and submitted for recording in that form must be no larger than 8 1/2 inches by 14 inches and comply with either this subsection or subsection (n) of this section. Such a map shall either (i) have ~~an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors~~ the original signature of a registered land surveyor and the surveyor's seal as approved by the State Board of Registration for Professional Engineers and Land Surveyors, or (ii) be a copy of a map, already on file in the public ~~record,~~ records, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors."

Section 11. G.S. 47-30(n) reads as rewritten:

"(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for ~~inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY."~~ recording in that form for illustrative purposes only if it meets both of the following requirements:

(1) It is no larger than 8 1/2 inches by 14 inches.

(2) It is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.""

Section 12. G.S. 47-30.2(c) reads as rewritten:

"(c) A map or plat must be presented to the Review Officer unless one or more of the following conditions are applicable:

(1) ~~the~~ The certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c.

(2) The map or plat is exempt from the requirements of G.S. 47-30 pursuant to G.S. 47-30(j) or (l).

(3) The map is an attachment that is being recorded pursuant to G.S. 47-30(n)."

Section 13. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 34.

"Certificates of Authentication.

"§ 66-270. Authority of Secretary of State to authenticate documents.

The Secretary, or the Secretary's designee, may sign and issue a certificate of authentication for a document that has been executed or issued in this State so that it can be recognized in a foreign jurisdiction. The certificate may be issued under the seal of the Department of the Secretary of State or under the Great Seal of the State of North Carolina. The Secretary may adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

"§ 66-271. Definitions.

The following definitions apply in this Article:

(1) Authentication. -- Certification of the genuineness of an official's signature, seal, or position within the State of North Carolina so the document can be recognized in a foreign jurisdiction.

(2) Department. -- The Department of the Secretary of State.

(3) Foreign jurisdiction. -- A jurisdiction outside the State of North Carolina.

(4) Foreign official. -- An individual authorized by a foreign jurisdiction to attest to the genuineness of a document or to the position of an individual within that foreign jurisdiction.

(5) Notary public. -- Defined in G.S. 10A-3.

(6) Official. -- An individual who is a notary public, an individual who is elected or appointed to hold an office in State government, or an individual who is elected or appointed to hold an office in a local governmental unit of this State.

(7) Secretary. -- The Secretary of State.

(8) Specimen. -- A record of a person's signature, seal, or position as an official within the State maintained in the Department.

"§ 66-272. Certificate of authentication.

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of

the official's seal and signature on file in the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication may be placed on the document itself, if space is available, or by appending it to the document on a separate sheet.

"§ 66-273. Prerequisites for authentication.

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.

(2) All dates must follow in chronological order on all certifications.

(3) All acknowledgments to be authenticated by the Secretary shall be in English or accompanied by a certified or notarized English translation.

(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

"§ 66-274. Limitations on authentication.

(a) The Secretary shall not issue a certificate of authentication for a document if the Secretary has cause to believe that the certificate is desired for an unlawful or improper purpose. The Secretary may examine not only the document for which a certificate is requested, but also any documents to which the previous seals or other certifications may have been affixed by other authorities. The Secretary may request any additional information that may be necessary to establish that the requested certificate will serve the interests of justice and is not contrary to public policy, including a certified or notarized English translation of document text in a foreign language.

(b) The Secretary shall not issue a certificate of authentication for any one or more of the following:

(1) A seal or signature that cannot be authenticated by either the Secretary or another official.

(2) A seal or signature of a foreign official.

(3) A facsimile, photostat, photographic or other reproduction of a signature or seal.

(c) The Secretary may not include within the certificate of authentication any statement that is not within the Secretary's power or knowledge to authenticate. The Secretary may not certify that a document has been executed or certified in accordance with the law of any particular jurisdiction or that a document is a valid document in a particular jurisdiction."

Section 14. Part 2 of Article 16 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-16-22.1. Curative provision.**

(a) A corporation that is delinquent in filing an annual report for any one or more of the years 1991 through 1997 may satisfy the annual report requirement and avoid administrative dissolution or revocation of its certificate of authority by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee for each delinquent annual report.

(b) A corporation that has been issued a certificate of administrative dissolution under G.S. 55-14-21 or a certificate of revocation of authority under G.S. 55-15-31 for failure to file an annual report for any one or more of the years 1991 through 1997 may be granted a certificate of reinstatement or a new certificate of authority by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee for each delinquent annual report.

(3) File an application for reinstatement or an application for a new certificate of authority, whichever is appropriate.

(4) Pay the filing fee for an application for reinstatement following administrative dissolution or the fee for an application of a certificate of authority, whichever is appropriate.

(5) Comply with G.S. 55-4-01.

The certificate of reinstatement and the certificate of authority, when it is effective, relates back to and takes effect as of the date of the administrative dissolution or of the certificate of revocation of authority. The corporation may resume carrying on its business as if the administrative dissolution or certificate of revocation of authority had never occurred, subject to the rights of any persons who reasonably relied to their prejudice upon the certificate of dissolution or the certificate of revocation of authority.

(c) The relief provided by this section shall not be available to a corporation that receives a certificate of dissolution or a certificate of authority revoked for a reason other than the failure to file an annual report under G.S. 55-14-20 or G.S. 55-15-30."

Section 15. Article 6 of Chapter x57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-6-03.1. Curative provision.**

(a) A limited liability company that is delinquent in filing an annual report for any one or more of the years 1993 through 1997 may satisfy the annual report requirement and avoid administrative dissolution by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee for each delinquent annual report.

(b) A limited liability company that has been issued a certificate of administrative dissolution under G.S. 57C-6-03 for failure to file an annual report for any one or more of the years 1993 through 1997 may be granted a certificate of reinstatement by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee for each delinquent annual report.

(3) File an application for reinstatement.

(4) Pay the filing fee for an application for reinstatement following administrative dissolution.

(5) Comply with G.S. 57C-2-30.

The certificate of reinstatement, when it is effective, relates back to and takes effect as of the date of the administrative dissolution. The limited liability company may resume carrying on its business as if the administrative dissolution of authority had never occurred, subject to the rights of any persons who reasonably relied to their prejudice upon the certificate of dissolution.

(c) The relief provided by this section shall not be available to a limited liability company that receives a certificate of dissolution for a reason other than the failure to file an annual report under G.S. 57C-6-03."

Section 16. Sections 9, 14, and 15 of this act are effective when they become law. Sections 14 and 15 of this act are repealed December 1, 1999. Sections 10 and 11 of this act

become effective December 1, 1998. The remainder of this act becomes effective September 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1552
Finance Committee Substitute Adopted 7/15/98
House Committee Substitute Favorable 8/5/98

Short Title: Notary Public Changes. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE NOTARY PUBLIC ACT, TO EXEMPT SOME MAPS FROM THE CERTIFICATION REQUIREMENT, AND TO AUTHORIZE THE SECRETARY OF STATE TO AUTHENTICATE DOCUMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-2 reads as rewritten:

"**§ 10A-2. Purposes.**

This Chapter shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery."

Section 2. G.S. 10A-3 reads as rewritten:

"**§ 10A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Acknowledgment. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily.

(2) Commission. -- The written authority to perform a notarial act.

(2a) Director. -- The Director of the Notary Section of the Department of the Secretary of State.

(3) Notarial act, notary act, and notarization. -- Any act that a notary is empowered to perform under G.S. 10A-9.

(4) Notary public and notary. -- A person commissioned to perform notarial acts under this Chapter.

(5) Oath or affirmation. -- A notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary, with reference made to a Supreme Being for an oath and with no reference made to a Supreme Being for an affirmation.

(6) Official misconduct. -- Either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary ~~of State~~ to be negligent or against the public interest.

(7) Personal knowledge of identity. -- Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(8) Satisfactory evidence of identity. -- Identification of an individual based on either of the following:

a. One current document issued by a federal or state government with the individual's photograph.

b. Identification by a credible person who is personally known to the notary and who has personal knowledge of the individual's identity.

(8a) Secretary. -- The Secretary of State.

(9) Verification or proof. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has, in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document."

Section 3. G.S. 10A-4 reads as rewritten:

"**§ 10A-4. Commissioning.**

(a) Except as provided in subsection (c) of this section, the Secretary ~~of State~~ shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary ~~of State~~ and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary ~~of State~~ that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary ~~of State~~ and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. ~~The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.~~

(c) The Secretary ~~of State~~ may deny an application for commission or recommission as a notary if any of the following applies to the applicant:

(1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.

(1a) The applicant has been convicted of a felony and the applicant's rights have not been restored.

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.

(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the ~~Secretary of State.~~ Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the ~~Secretary of State.~~ Secretary.

(2) Have six months of active experience as a notary public.

(3) Maintain a current commission as a notary public.

(4) Purchase the current notary public guidebook.

(5) Pay a nonrefundable fee of fifty dollars ($50.00).

~~Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant and deputy clerks of court are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.~~ Certification to teach a course of study shall be effective for two years. A certification may be renewed by passing a recertification course taught by

the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars ($50.00).

(e) ~~Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of State.~~ The following people may be certified to teach a course of study required under subsection (b) of this section without meeting the requirements of subdivisions (d)(2), (d)(3), and (d)(5), and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

(1) Registers of deeds.
(2) Clerks of court.
(3) The Director."

Section 4. G.S. 10A-9(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.
(2) The readable appearance of the notary's name, either from the notary's signature or ~~otherwise.~~ from the notary's typed, printed, or embossed name near the signature.
(3) The clear and legible appearance of the notary's stamp or seal.
(4) A statement of the date the notary's commission expires."

Section 5. G.S. 10A-10 reads as rewritten:

"**§ 10A-10. Fees of notaries.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature.
(2) For oaths or affirmations without a verification or proof, ~~two dollars ($2.00)~~ three dollars ($3.00) per person.
(3) For verifications or proofs, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature."

Section 6. G.S. 10A-11 reads as rewritten:

"**§ 10A-11. Notarial stamp or seal.**

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words "North Carolina" or an abbreviation thereof, and the words "Notary Public". The official stamp or seal, as it appears on a document, may contain a permanently imprinted or a handwritten expiration date of the notary's commission. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it. However, upon revocation,

the notary shall immediately surrender the stamp or seal to the ~~Secretary of State.~~ Secretary."

Section 7. G.S. 10A-14 reads as rewritten:

"**§ 10A-14. ~~Clerks are notaries ex officio and may certify own seals.~~ Notaries ex officio.**

(a) The clerks of the superior court ~~and their assistants and deputies~~ may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts under the seals of their respective courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts under the seals of their respective offices.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Office of the Secretary of State and may certify a notarial act performed in that capacity under the seal of the Secretary of State.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10A-10. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed."

Section 8. G.S. 10A-15 is repealed.

Section 9. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is ~~erroneously~~ stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "N. C.", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for ~~Georgia,~~ another state are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~June 1, 1997.~~ August 1, 1998."

Section 10. G.S. 47-30(m) reads as rewritten:

"(m) ~~Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor.~~ Maps attached to deeds or other instruments and submitted for recording in that form must be no larger than 8 1/2

inches by 14 inches and comply with either this subsection or subsection (n) of this section. Such a map shall either (i) have ~~an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors~~ the original signature of a registered land surveyor and the surveyor's seal as approved by the State Board of Registration for Professional Engineers and Land Surveyors, or (ii) be a copy of a map, already on file in the public ~~record,~~ records, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors."

Section 11. G.S. 47-30(n) reads as rewritten:

"(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for ~~inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY."~~ recording in that form for illustrative purposes only if it meets both of the following requirements:

(1) It is no larger than 8 1/2 inches by 14 inches.

(2) It is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.""

Section 12. G.S. 47-30.2(c) reads as rewritten:

"(c) A map or plat must be presented to the Review Officer unless one or more of the following conditions are applicable:

(1) ~~the~~ The certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c.

(2) The map or plat is exempt from the requirements of G.S. 47-30 pursuant to G.S. 47-30(j) or (l).

(3) The map is an attachment that is being recorded pursuant to G.S. 47-30(n)."

Section 13. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 34.

"Certificates of Authentication.

"§ 66-270. Authority of Secretary of State to authenticate documents.

The Secretary, or the Secretary's designee, may sign and issue a certificate of authentication for a document that has been executed or issued in this State so that it can be recognized in a foreign jurisdiction. The certificate may be issued under the seal of the Department of the Secretary of State or under the Great Seal of the State

of North Carolina. The Secretary may adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

"§ 66-271. Definitions.

The following definitions apply in this Article:

(1) Authentication. -- Certification of the genuineness of an official's signature, seal, or position within the State of North Carolina so the document can be recognized in a foreign jurisdiction.

(2) Department. -- The Department of the Secretary of State.

(3) Foreign jurisdiction. -- A jurisdiction outside the State of North Carolina.

(4) Foreign official. -- An individual authorized by a foreign jurisdiction to attest to the genuineness of a document or to the position of an individual within that foreign jurisdiction.

(5) Notary public. -- Defined in G.S. 10A-3.

(6) Official. -- An individual who is a notary public, an individual who is elected or appointed to hold an office in State government, or an individual who is elected or appointed to hold an office in a local governmental unit of this State.

(7) Secretary. -- The Secretary of State.

(8) Specimen. -- A record of a person's signature, seal, or position as an official within the State maintained in the Department.

"§ 66-272. Certificate of authentication.

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of the official's seal and signature on file in the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication may be placed on the document itself, if space is available, or by appending it to the document on a separate sheet.

"§ 66-273. Prerequisites for authentication.

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.

(2) All dates must follow in chronological order on all certifications.

(3) All acknowledgments to be authenticated by the Secretary shall be in English or accompanied by a certified or notarized English translation.

(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

"§ 66-274. Limitations on authentication.

(a) The Secretary shall not issue a certificate of authentication for a document if the Secretary has cause to believe that the certificate is desired for an unlawful or improper purpose. The Secretary may examine not only the document for which a certificate is requested, but also any documents to which the previous seals or other certifications may have been affixed by other authorities. The Secretary may request any additional information that may be necessary to establish that the requested certificate will serve the interests of justice and is not contrary to public policy, including a certified or notarized English translation of document text in a foreign language.

(b) The Secretary shall not issue a certificate of authentication for any one or more of the following:

(1) A seal or signature that cannot be authenticated by either the Secretary or another official.

(2) A seal or signature of a foreign official.

(3) A facsimile, photostat, photographic or other reproduction of a signature or seal.

(c) The Secretary may not include within the certificate of authentication any statement that is not within the Secretary's power or knowledge to authenticate. The Secretary may not certify that a document has been executed or certified in accordance with the law of any particular jurisdiction or that a document is a valid document in a particular jurisdiction."

Section 14. Section 9 of this act is effective when it becomes law. Sections 10 and 11 of this act become effective December 1, 1998. The remainder of this act becomes effective September 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1552

SHORT TITLE: Changes to the Notary Public Act

SPONSOR(S): Senator Kerr

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	$2,900	$3,050	$3,200	$3,350	$3,500
EXPENDITURES					
POSITIONS: NA					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State

EFFECTIVE DATE: July 1, 1998

BILL SUMMARY:

Amends G.S. 10A-2 to specify that one of the chapter's purposes is to prevent fraud and forgery. Amends G.S. 10A-4 to require payment of a $50 fee to be certified to teach a course of study for notaries public, and to renew certification. Adds director and employees of the Notary Division of the Department of the Secretary of State to existing exemption from certain instructor certification requirements. Amends G.S. 10A-15 to permit director and employees of the Notary Division to act as notaries public by virtue of their employment by the Secretary of State, and to allow them to certify their notarial acts under the Secretary of State's seal. Amends G.S. 10A-4 (c) to specify that the Secretary of State may deny an application for commission or recommission as a notary if applicant has been convicted of a felony. Amends G.S. 10A-11 to add to and clarify specifications for notary seals. Amends G.S. 10A-16 to validate various notarial acts performed before October 1, 1998, and to clarify and add to the acts that are covered by the validation.

ASSUMPTIONS AND METHODOLOGY:
The number of initial certifications to teach a course of study for notaries public and the certification renewals to teach the courses are represented below by the single figures for the 1993-94 through the 1997-98 (projected) fiscal years:

1993-94	1994-95	1995-96	1996-97	1997-98 (est.)
43	47	50	52	55

Senate Bill 1552 authorizes the Secretary of State to charge a $50 fee for each initial certification and renewal to teach a course of study for notaries public. Relying on the experience from 1993-94 to 1996-97, we estimate an average annual increase of 3 individuals to the total number of individuals receiving initial certification and/or certification renewal. The following numbers (by fiscal year) represent the projected number of certifications and renewals in the out years:

1998-99	1999-00	2000-01	2001-02	2002-03
58	61	64	67	70

We simply multiply the projected numbers of initial certificates and renewals (above) times the $50 fee (authorized by the bill) to get the revenue projections by fiscal year reflected in the **FISCAL IMPACT** section of this note.

TECHNICAL CONSIDERATIONS:
None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Dwayne Pinkney
APPROVED BY:
DATE: June 16, 1998

EXPLANATION OF SENATE BILL 1552:
Proposed House Committee Substitute
Changes to the Notary Public Act

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 24, 1998
SPONSOR: Senator Kerr

Senate Bill 1552 does the following:

- Makes several changes to the Notary Public Act.
- Makes changes to the law concerning the recordation of maps.
- Gives the Secretary of State the authority to authenticate documents. The Office of the Secretary of State currently issues certificates of authentication even though it does not have the specific statutory authority to do so.
- **The proposed House Finance Committee Substitute** adds two sections to the bill (Sections 14 and 15) to provide a curative provision for corporations and LLCs that are delinquent in filing their corporate annual reports. The provision was added at the request of the sponsor of the bill and the Secretary of State's office.

Changes to the Notary Public Act

Sections 1 through 9 contain the changes to the Notary Public Act:

- Section 1 states that one of the purposes of the Notary Public Act is to prevent fraud and perjury.
- Section 2 adds the words "Director" and "Secretary" to the list of terms defined in the Act.
- Section 3 makes five changes to G.S. 10A-4. It provides that the Secretary may deny a notary commission or re-commission to a person who has been convicted of a felony. The Secretary currently denies an applicant a notary commission if the applicant has been convicted of a felony and the applicant's rights have not been restored. Article VI, Sec. 8 of the North Carolina Constitution says that a felon may not hold an office in this State. The Secretary considers a notary an office holder for purposes of this Constitutional provision.

  Second, it imposes a $50 fee for certification and re-certification as a notary instructor. Currently, there is no fee charged for this certification, which lasts for two years. The fee would assist in defraying the costs associated with teaching the instructor's course.

  Third, it exempts the Director of the Notary Section of the Department of

the Office of the Secretary of State from having to have six months of active experience as a notary public and from maintaining a current commission as a notary public to be certified as a notary public instructor.

Fourth, this section provides that registers of deeds, clerks of courts, and the Director of the Notary Section of the Department of the Secretary of State do not have to pay this $50 fee to be certified as an instructor.

Lastly, it removes the requirement that an applicant obtain the recommendation of one publicly elected official in North Carolina.

- Section 4 clarifies that the notary's name must be clear from either the notary's signature or the notary's typed, printed, or embossed name near the signature line.
- Section 5 increases the amount a notary may charge for the notary's services from $2 to $3 per person or signature.
- Section 6 clarifies the law as to the alteration of a notary's seal or stamp. Some stamps and seals contain a blank for a notary to write-in the notary's expiration date. However, an Attorney General's opinion states that this in an impermissible alteration of the notary's seal. This section provides that a stamp or seal <u>may</u> provide for a handwritten expiration date.
- Section 7 authorizes the Director of the Notary Section of the Department of the Secretary of State to act as notaries. The Director would be a notary by virtue of the position as the Director. The Director would not need to apply for commissioning, take the course of study, pay the $25 fee, or have a five-year re-commissioning.

  The section consolidates two statutes that concern notaries ex officio: Registers of Deeds and Clerks of Courts. Under current law, the assistant and deputy clerks and register of deeds are also notaries by virtue of their employment. The House Judiciary II Committee removed this authority for deputies and assistants.

  The section also provides that these notaries ex officio may charge for their notary services to the extent allowed under G.S. 10A-10. The fee is payable to the governmental unit or agency by whom the notary is employed.
- Section 8 repeals a statute that is consolidated in Section 7.
- Section 9 expands the curative provision from June 1, 1997, to August 1, 1998.

<u>Mapping Changes</u>

Sections 10 through 12 contain the changes to the mapping statutes:

- Section 10 requires that maps attached to deeds or other instruments be no larger than 8 ½ by 14. This provision is added so that it is clear that such a map can be recorded in the deed books.
- Maps that are not prepared by a registered land surveyor may be attached to a deed or other instrument for recordation for illustrative purposes if it

contains a label that it is not a certified survey and it is no larger than 8 ½ by 14. Section 11 changes the wording of the label to recognize that some maps in this category may be accurate. The new wording also contains language regarding the lack of governmental review to guard against an innocent purchaser believing that because he is given a map that all subdivision and other land use regulations have been satisfied.

- Last session, the General Assembly required certain maps to be reviewed and certified by a plat Review Officer before the maps could be recorded. Section 12 creates some additional exemptions to this requirement: municipal annexation and boundary maps, highway right-of-way and roadway corridor maps, and maps attached to deeds for illustrative purposes under G.S. 47-30(n).

Certificates of Authentication

Section 13 addresses the Secretary of State's concern that the Department of the Secretary of State needs specific legislative authority to authenticate documents. The Department currently provides this service. A certificate of authentication certifies a document as to the genuineness of an official's signature, seal, or position within the State so that the document can be recognized in a foreign jurisdiction. This certificate is needed in many international adoptions and international business transactions.

Corporate Annual Reports

Sections 14 and 15 provide that a corporation or LLC that is delinquent in filing its annual report may satisfy the annual report requirement and avoid being administratively dissolved by filing a current annual report on or before November 30, 1999, and by paying the annual report filing fee for each delinquent report. For those corporations and LLCs that have already been administratively dissolved for this reason, the bill provides that they may be reinstated by filing a current annual report on or before November 30, 1999, and by paying the annual report filing fee for each delinquent report and the filing fee for an application for reinstatement.

Beginning in 1991 for corporations and 1993 for limited liability companies, the General Assembly required the filing of annual reports. The annual report serves to preserve the integrity of the public records. Failure to file an annual report is one of the grounds for administrative dissolution. Once dissolved, an entity is required to cease doing business and begin winding up its affairs. However, a dissolved entity can be reinstated by the Secretary of State if it corrects the problem and applies for reinstatement within five years after it was administratively dissolved.

The most common reason for administrative dissolution is the failure to file an annual report. Although the majority of entities dissolved by the Secretary for failure to file an annual report are actually abandoned, some active entities did not respond through inadvertence. To try to eliminate inadvertent failures to file an annual report, the General Assembly passed an act last year to require the annual report be filed with the appropriate annual tax forms. The Commission concluded that filing these forms together would virtually eliminate inadvertent failures to file an annual report and would be more efficient and less confusing for the entities that must file annual reports.

The act passed last year succeeded in notifying corporations and LLCs of the annual report requirement. Sections 14 and 15 of this act are proposed to help keep these entities from being administratively dissolved. Without these changes, some corporations have exceeded the five year period for reinstatement. Also, to be reinstated, or to avoid dissolution, the companies must file every delinquent annual report. This bill would provide that the entity must file the most recent annual report only.

Effective Dates

The curative provisions in Sections 9, 14, and 15 becomes effective when they become law. The mapping changes concerning the size of recordable maps become effective December 1, 1998. The remainder of the bill, including the fee for being certified and re-certified as a notary instructor, becomes effective September 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 1552 Amendment No. _____

(to be filled in by Principal Clerk)

Rep.)
)
Sen.)

as proposed to be amended by Rep. Nesbitt's Amendment,

moves to amend the bill ~~on page~~ on page 1, line 6,

~~by~~ Amendment Number 1 by rewriting the line to read:

"on the ~~application~~ application in witness of the applicant's character and fitness to serve as a notary public.".

SIGNED Robert Brawley

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1552

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1552-ARB-8/31 Page 1 of __

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [ ]
S1552-CSRB-8/31

Representative Nesbitt

moves to amend the bill on page 3, line 37-40, by rewriting the lines to read:

"oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED ___X___ FAILED _____ TABLED _____

ROLL CALL VOTE

Nesbitt Amendment

____ YES ____ NO = _____(TOTAL)

HB# ____
SB# 1552

HOUSE STANDING COMMITTEE ON _____

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
___	___	ALLRED	___	___	HIGHTOWER
___	___	ARNOLD	___	___	JARRELL
___	___	BADDOUR	___	___	LUEBKE
___	___	BEALL	___	___	MCCOMAS
___	___	BERRY	___	___	MCCOMBS
___	___	BOYD-MCINTYRE	___	___	MCMAHAN
___	___	BROWN	___	___	MERCER
___	___	BUCHANAN	___	___	MILLER
___	___	CAPPS	___	___	MINER
___	___	CARPENTER	___	___	MORGAN
___	___	COLE	___	___	MORRIS
___	___	CRAWFORD	___	___	NEELY
___	___	CUNNINGHAM	___	___	NESBITT
___	___	DECKER	___	___	NICHOLS
___	___	DEDMON	___	___	RAMSEY
___	___	EDDINS	___	___	RAYFIELD
___	___	FITCH	___	___	RUSSELL
___	___	GAMBLE	___	___	STARNES
___	___	GOODWIN	___	___	TALLENT
___	___	HACKNEY	___	___	WOMBLE
___	___	HENSLEY	___	___	WRIGHT
___	___	HILL	___	___	
___	___	HOWARD	___	___	
___	___	~~HUNTER~~ Bryant	___	___	

9 nays

20 ayes

Show & Lands

___	___	**CHAIRMEN**		
___	___	GRAY	___	___
___	___	BRAWLEY	___	___
___	___	DICKSON	___	___
___	___	WILSON, C.	___	___
___	___		___	___
___	___		Ex officio Members	
___	___		___	___ Speaker Pro TemWOOD
___	___		___	___ Majority LeaderDAUGHTRY
___	___		___	___ Majority Whip

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1552
Finance Committee Substitute Adopted 7/15/98
House Committee Substitute Favorable 8/5/98
Proposed House Committee Substitute S1552-PCS3658-RB

Short Title: Notary Public Changes. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE NOTARY PUBLIC ACT, TO EXEMPT SOME MAPS FROM THE CERTIFICATION REQUIREMENT, TO AUTHORIZE THE SECRETARY OF STATE TO AUTHENTICATE DOCUMENTS, AND TO GIVE RELIEF TO CORPORATIONS AND LIMITED LIABILITY COMPANIES THAT HAVE BEEN ADMINISTRATIVELY DISSOLVED OR MAY BE ADMINISTRATIVELY DISSOLVED BECAUSE OF FAILURE TO FILE A CORPORATE ANNUAL REPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-2 reads as rewritten:

"**§ 10A-2. Purposes.**

This Chapter shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery."

Section 2. G.S. 10A-3 reads as rewritten:

"**§ 10A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Acknowledgment. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or

proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily.

(2) Commission. -- The written authority to perform a notarial act.

(2a) Director. -- The Director of the Notary Section of the Department of the Secretary of State.

(3) Notarial act, notary act, and notarization. -- Any act that a notary is empowered to perform under G.S. 10A-9.

(4) Notary public and notary. -- A person commissioned to perform notarial acts under this Chapter.

(5) Oath or affirmation. -- A notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary, with reference made to a Supreme Being for an oath and with no reference made to a Supreme Being for an affirmation.

(6) Official misconduct. -- Either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary ~~of State~~ to be negligent or against the public interest.

(7) Personal knowledge of identity. -- Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(8) Satisfactory evidence of identity. -- Identification of an individual based on either of the following:

a. One current document issued by a federal or state government with the individual's photograph.

b. Identification by a credible person who is personally known to the notary and who has personal knowledge of the individual's identity.

(8a) Secretary. -- The Secretary of State.

(9) Verification or proof. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has, in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document."

Section 3. G.S. 10A-4 reads as rewritten:

"**§ 10A-4. Commissioning.**

(a) Except as provided in subsection (c) of this section, the Secretary ~~of State~~ shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.
(2) Reside or work in this State.
(3) Satisfactorily complete a course of study that is approved by the Secretary ~~of State~~ and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.
(4) Purchase and keep as a reference a manual approved by the Secretary ~~of State~~ that describes the duties, authority, and ethical responsibilities of notaries public.
(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary ~~of State~~ and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.
(6) Pay a nonrefundable fee of twenty-five dollars ($25.00).

(c) The Secretary ~~of State~~ may deny an application for commission or recommission as a notary if any of the following applies to the applicant:
(1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.
(1a) The applicant has been convicted of a felony and the applicant's rights have not been restored.
(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.
(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

~~(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the Secretary of State. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:~~
~~(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the Secretary of State.~~
~~(2) Have six months of active experience as a notary public.~~
~~(3) Maintain a current commission as a notary public.~~
~~(4) Purchase the current notary public guidebook.~~
~~Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant and deputy clerks of court are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.~~

~~(c) Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of State.~~"

Section 4. G.S. 10A-7 reads as rewritten:

"**§ 10A-7. ~~Fee with commission application.~~ Instructor's certification.**

~~Every applicant for a notarial commission shall pay to this State a nonrefundable fee of twenty-five dollars ($25.00). Every applicant for recommissioning shall pay to this State a nonrefundable fee of twenty-five dollars ($25.00).~~

(a) The course of study required by G.S. 10A-4(b) shall be taught by an instructor certified in accordance with rules adopted by the Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the Director or other person approved by the Secretary.
(2) Have six months of active experience as a notary public.
(3) Maintain a current commission as a notary public.
(4) Purchase the current notary public guidebook.
(5) Pay a nonrefundable fee of fifty dollars ($50.00).

(b) Certification to teach a course of study for notaries public shall be effective for two years. A certification may be renewed by passing a recertification course taught by the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars ($50.00).

(c) The following people may be certified to teach a course of study for notaries public without meeting the requirements of subdivisions (a)(2), (a)(3), and (a)(5) of this section, and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

(1) Registers of deeds.
(2) Clerks of court.
(3) The Director."

Section 5. G.S. 10A-9(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.
(2) The readable appearance of the notary's name, either from the notary's signature or ~~otherwise.~~ from the notary's typed, printed, or embossed name near the signature.
(3) The clear and legible appearance of the notary's stamp or seal.
(4) A statement of the date the notary's commission expires."

Section 6. G.S. 10A-10 reads as rewritten:

"**§ 10A-10. Fees of notaries.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature.

(2) For oaths or affirmations without a verification or proof, ~~two dollars ($2.00)~~ three dollars ($3.00) per person.

(3) For verifications or proofs, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature."

Section 7. G.S. 10A-11 reads as rewritten:

"**§ 10A-11. Notarial stamp or seal.**

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words 'North Carolina' or an abbreviation thereof, and the words 'Notary Public'. The official stamp or seal, as it appears on a document, may contain a permanently imprinted or a handwritten expiration date of the notary's commission. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it. However, upon revocation, the notary shall immediately surrender the stamp or seal to the ~~Secretary of State.~~ Secretary."

Section 8. G.S. 10A-14 reads as rewritten:

"**§ 10A-14. ~~Clerks are notaries ex officio and may certify own seals.~~ Notaries ex officio.**

(a) The clerks of the superior court ~~and their assistants and deputies~~ may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts only under the seals of their respective courts. Assistant and deputy clerks of superior court, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective courts:

(1) Oaths and affirmations.

(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10A-4(b), assistant and deputy clerks of superior court may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective courts. A course of study attended only by assistant and deputy clerks of superior court may be taught at any mutually convenient location agreed to by the Secretary and the Administrative Officer of the Courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts only under the seals of their respective offices. Assistant and deputy registers of deeds, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective offices:

(1) Oaths and affirmations.

(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10A-4(b), assistant and deputy registers of deeds may, by virtue of their offices, perform all other notarial

acts and may certify these notarial acts only under the seals of their respective offices. A course of study attended only by assistant and deputy registers of deeds may be taught at any mutually convenient location agreed to by the Secretary and the North Carolina Association of Registers of Deeds.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Secretary of State and may certify a notarial act performed in that capacity under the seal of the Secretary of State.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10A-10. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed.

(e) Nothing in this section shall authorize a person to act as a notary public other than in the performance of the official duties of the person's office unless the person complies fully with the requirements of G.S. 10A-4."

Section 9. G.S. 10A-15 is repealed.

Section 10. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is ~~erroneously~~ stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words 'North Carolina' or the abbreviation 'N. C.', or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for ~~Georgia,~~ another state are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~June 1, 1997.~~ September 1, 1998."

Section 11. G.S. 47-30(m) reads as rewritten:

"(m) ~~Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor.~~ Maps attached to deeds or other instruments and submitted for recording in that form must be no larger than 8 1/2 inches by 14 inches and comply with either this subsection or subsection (n) of this section. Such a map shall either (i) have ~~an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors~~ the original signature of a registered land surveyor

and the surveyor's seal as approved by the State Board of Registration for Professional Engineers and Land Surveyors, or (ii) be a copy of a map, already on file in the public ~~record,~~ records, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors."

Section 12. G.S. 47-30(n) reads as rewritten:

"(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for ~~inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY."~~ recording in that form for illustrative purposes only if it meets both of the following requirements:

(1) It is no larger than 8 1/2 inches by 14 inches.

(2) It is conspicuously labelled, 'THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.'"

Section 13. G.S. 47-30.2(c) reads as rewritten:

"(c) A map or plat must be presented to the Review Officer unless one or more of the following conditions are applicable:

(1) ~~the~~ The certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c.

(2) The map or plat is exempt from the requirements of G.S. 47-30 pursuant to G.S. 47-30(j) or (l).

(3) The map is an attachment that is being recorded pursuant to G.S. 47-30(n)."

Section 14. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 34.

"Certificates of Authentication.

"§ 66-270. Authority of Secretary of State to authenticate documents.

The Secretary, or the Secretary's designee, may sign and issue a certificate of authentication for a document that has been executed or issued in this State so that it can be recognized in a foreign jurisdiction. The certificate may be issued under the seal of the Department of the Secretary of State or under the Great Seal of the State of North Carolina. The Secretary may adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

"§ 66-271. Definitions.

The following definitions apply in this Article:

(1) Authentication. -- Certification of the genuineness of an official's signature, seal, or position within the State of North Carolina so the document can be recognized in a foreign jurisdiction.
(2) Department. -- The Department of the Secretary of State.
(3) Foreign jurisdiction. -- A jurisdiction outside the State of North Carolina.
(4) Foreign official. -- An individual authorized by a foreign jurisdiction to attest to the genuineness of a document or to the position of an individual within that foreign jurisdiction.
(5) Notary public. -- Defined in G.S. 10A-3.
(6) Official. -- An individual who is a notary public, an individual who is elected or appointed to hold an office in State government, or an individual who is elected or appointed to hold an office in a local governmental unit of this State.
(7) Secretary. -- The Secretary of State.
(8) Specimen. -- A record of a person's signature, seal, or position as an official within the State maintained in the Department.

"**§ 66-272. Certificate of authentication.**

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of the official's seal and signature on file in the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication may be placed on the document itself, if space is available, or by appending it to the document on a separate sheet.

"**§ 66-273. Prerequisites for authentication.**

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.
(2) All dates must follow in chronological order on all certifications.
(3) All acknowledgments to be authenticated by the Secretary shall be in English or accompanied by a certified or notarized English translation.
(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

"**§ 66-274. Limitations on authentication.**

(a) The Secretary shall not issue a certificate of authentication for a document if the Secretary has cause to believe that the certificate is desired for an unlawful or improper purpose. The Secretary may examine not only the document for which a certificate is requested, but also any documents to which the previous seals or other

certifications may have been affixed by other authorities. The Secretary may request any additional information that may be necessary to establish that the requested certificate will serve the interests of justice and is not contrary to public policy, including a certified or notarized English translation of document text in a foreign language.

(b) The Secretary shall not issue a certificate of authentication for any one or more of the following:

(1) A seal or signature that cannot be authenticated by either the Secretary or another official.

(2) A seal or signature of a foreign official.

(3) A facsimile, photostat, photographic, or other reproduction of a signature or seal.

(c) The Secretary may not include within the certificate of authentication any statement that is not within the Secretary's power or knowledge to authenticate. The Secretary may not certify that a document has been executed or certified in accordance with the law of any particular jurisdiction or that a document is a valid document in a particular jurisdiction.

"**§ 66-275. Other methods of authentication not precluded.**

Nothing in this Article shall preclude or invalidate any other method that is provided by statute or common law for certifying or exemplifying the authenticity of a document or preclude the recognition in a foreign jurisdiction of a document whose authenticity is so certified or exemplified."

Section 15. Part 2 of Article 16 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-16-22.1. Curative provision.**

(a) A corporation that is delinquent in filing an annual report for any one or more of the years 1991 through 1997 may satisfy the annual report requirement and avoid administrative dissolution or revocation of its certificate of authority by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the current annual report filing fee provided in G.S. 55-1-22.

(3) Pay the annual report filing fee for each delinquent annual report.

(b) A corporation that has been issued a certificate of administrative dissolution under G.S. 55-14-21 or a certificate of revocation of authority under G.S. 55-15-31 for failure to file an annual report for any one or more of the years 1991 through 1997 may be granted a certificate of reinstatement or a new certificate of authority by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the current annual report filing fee provided in G.S. 55-1-22.

(3) Pay the annual report filing fee for each delinquent annual report.

(4) File an application for reinstatement or an application for a new certificate of authority, whichever is appropriate. The filing fee is waived.

(5) Comply with G.S. 55-4-01.

The certificate of reinstatement and the certificate of authority, when it is effective, relates back to and takes effect as of the date of the administrative dissolution or of the certificate of revocation of authority. The corporation may resume carrying on its business as if the administrative dissolution or certificate of revocation of authority had never occurred, subject to the rights of any persons who reasonably relied to their prejudice upon the certificate of dissolution or the certificate of revocation of authority.

(c) The relief provided by this section shall not be available to a corporation that receives a certificate of dissolution or a certificate of authority revoked for a reason other than the failure to file an annual report under G.S. 55-14-20 or G.S. 55-15-30."

Section 16. Article 6 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-6-03.1. Curative provision.**

(a) A limited liability company that is delinquent in filing an annual report for any one or more of the years 1993 through 1997 may satisfy the annual report requirement and avoid administrative dissolution by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee provided in G.S. 57C-1-22.

(b) A limited liability company that has been issued a certificate of administrative dissolution under G.S. 57C-6-03 for failure to file an annual report for any one or more of the years 1993 through 1997 may be granted a certificate of reinstatement by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee provided for in G.S. 57C-1-22.

(3) File an application for reinstatement. The filing fee is waived.

(4) Comply with G.S. 57C-2-30.

The certificate of reinstatement, when it is effective, relates back to and takes effect as of the date of the administrative dissolution. The limited liability company may resume carrying on its business as if the administrative dissolution of authority had never occurred, subject to the rights of any persons who reasonably relied to their prejudice upon the certificate of dissolution.

(c) The relief provided by this section shall not be available to a limited liability company that receives a certificate of dissolution for a reason other than the failure to file an annual report under G.S. 57C-6-03."

Section 17. Sections 10, 15, 16, and 17 of this act are effective when they become law. Sections 15 and 16 of this act are repealed December 1, 1999. Sections 11 and 12 of this act become effective December 1, 1998. The remainder of this act becomes effective September 1, 1998.

CSB copy

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

House ☒ Committee Substitute for

S.B. 1552 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE NOTARY PUBLIC ACT, TO EXEMPT SOME MAPS FROM THE CERTIFICATION REQUIREMENT, AND TO AUTHORIZE THE SECRETARY OF STATE TO AUTHENTICATE DOCUMENTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill (# 2), ☒ which changes the title, unfavorable as to ~~Senate~~ committee substitute bill. House #1

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1594
Finance Committee Substitute Adopted 6/24/98

Short Title: Teacher Certification Fees. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPOSE TEACHER CERTIFICATION FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-296 is amended by adding a new subsection to read:

"(a2) The State Board of Education shall impose the following schedule of fees for teacher certification and administrative changes:

(1) Application for demographic or administrative changes to a certificate, $30.00.

(2) Application for a duplicate certificate or for copies of documents in the certification files, $30.00.

(3) Application for a renewal, extension, addition, upgrade, and variation to a certificate, $55.00.

(4) Initial application for New, In-State Approved Program Graduate, $55.00.

(5) Initial application for Out-of-State certificate, $85.00.

(6) All other applications, $85.00.

The applicant must pay the fee at the time the application is submitted."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1594 (Second Edition)

SHORT TITLE: Education Board Sets Certification Fees

SPONSOR(S): Senator Lee

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
DPI receipt	$208,790	$208,790	$208,790	$208,790	$208,790
EXPENDITURES					
DPI budget	$160,000	$124,948	$124,948	$124,948	$138,948
POSITIONS:	4				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Education; Department of Public Instruction

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: The act establishes a schedule for teacher certification fees.

ASSUMPTIONS AND METHODOLOGY:

Revenue

SB 1594 establishes a fee schedule for the initial certification, renewal, and extension of all teaching certificates for the State Board of Education. In fact, the State Board of Education adopted such a fee schedule for teacher certification in 1975. The current fee schedule charges $45 for first time in-state licenses, upgrades, additions, and renewals; $65 for out-of-state applicants, Junior ROTC, lateral entry, vocational, and provisional licenses; and $30 for miscellaneous administrative changes. This bill gives statutory authority to what the Board has done administratively up till now.

The bill reflects the Board's intention to raise the fees beginning in FY 1998-99 to fund additional certification specialist positions. The Board proposes to increase the $45 fee to $55 and increase the $65 fee to $85 as shown in the chart below. The proposed revenue from SB

1594 was included on page 18 of the Governor's Recommended Changes to the 1998-99 State Budget. Based on FY 1996-97 data, the increased fees will raise an additional $208,790 in receipts each year.

Description	FY 1996-97 Requests	Current Fee	Current Revenue	Proposed Fee	Proposed Revenue
New Out-of-state	4,519	$65	$293,735	$85	$384,115
Additional Experience	1,290	$45	$58,050	$55	$70,950
Employed Alternative Program	5,350	$45	$240,750	$55	$294,250
In-State Additional Educational Level	1,298	$45	$58,410	$55	$71,390
Renewal Non-Employed	1,519	$45	$68,355	$55	$83,545
Employed Validation	410	$45	$18,450	$55	$22,550
Initial In-State	1,974	$45	$88,830	$55	$108,570
Total Revenue			**$826,580**		**$1,035,370**
Net Revenue Gain					**$208,790**

Expenditure

The additional revenue will be used to add four Certification Specialists (Grade 65) to the Teacher Licensure Section to handle the 6 to 8 week backlog in teacher certification requests. These four positions are requested in the Governor's Recommended Changes to the 1998-99 State Budget. Both the House and Senate Appropriations Committees included these receipt supported positions in the Appropriations Act of 1998 (SB 1366). The projected budget for these positions is as follows:

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
Salaries	$97,232	$97,232	$97,232	$97,232	$97,232
Social Security	7,440	7,440	7,440	7,440	7,440
Retirement	10,532	10,532	10,532	10,532	10,532
Medical Insurance	6,944	6,944	6,944	6,944	6,944
Transportation ground - in state	11,052				
Telephone	1,200	1,200	1,200	1,200	1,200
General Office Supplies	1,600	1,600	1,600	1,600	1,600
Furniture - Office	10,000				
Equipment - Computers	14,000				14,000
Total	$160,000	$124,948	$124,948	$124,948	$138,948

The salary of a Certification Specialist is budgeted at the minimum level of $24,308 per year. No increase in salary or benefits is included in the projection, but receipts are sufficient to cover any increases. The first year budget includes one time costs for furniture, computers, and transportation. The budget reflects that the computers will be replaced in four years.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: August 25, 1998

EXPLANATION OF SENATE BILL 1594 (2nd Edition):
Teacher Certification Fees

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 26, 1998
SPONSOR: Senator Lee

Senate Bill 1594 has passed the House and was given a favorable report in the House Committee on Education. The bill amends G.S. 115C-296 by adding a new subsection that sets out a fee schedule for certification of teachers in all public elementary and high schools in the State. Currently the fees are only set out in the State Board of Education Policy Manual and are used to support the personnel in the State Board of Education's certification division. The State Board has indicated that this division is very understaffed. The Bill also, in effect, increases the following current fees set out in the Policy Manual:

Application for renewal, extension, addition, upgrade and variation to a a certificate would increase from $45.00 to $55.00.
Initial application for New, In-State Approved Program Graduate would increase from $45.00 to $55.00.
Initial application for Out-of-State certificate would increase from $65.00 to $85.00.
All other applications not listed in the schedule would increase from $65.00 to $85.00.

Although there is currently no statute that establishes the fees for certification or that authorizes the State Board to set fees, it is clear from past budget bills that the Board's budget takes into account the receipts from certification fees. The General Assembly has known about the fees and has approved them each time it has adopted a budget bill since 1975. That year, the State Board adopted a certification fee schedule. The Board has increased the fees several times since 1975, but has never gone through the State's rulemaking procedure. If someone were to challenge the Board's authority to establish certification fees, it is possible a court would accept the position that the Board has implied authority to set and increase fees. If the court rejected this theory, however, the consequences would be that the fees are unenforceable.

Senate Bill 1594 as introduced would have given the State Board of Education the authority to set the application fees for teacher certification.

However, the Board would be required to go through rulemaking to establish these fees, and this process could take a year. The 2nd Edition of the bill sets the fee amounts in the statutes, thus allowing the fee schedule to be effective immediately upon enactment of the bill into law. When a State agency establishes a fee, it is exercising the taxing authority of the State. Therefore an agency may only establish a fee if a statute sets the exact fee amount or if a statute gives the agency the express authority to set the fee.

Rep Gene Arnold

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☒ Committee Substitute for
S.B. 1594 A BILL TO BE ENTITLED AN ACT TO IMPOSE TEACHER CERTIFICATION FEES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

Horse Pasture — Sept. 1, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Shanese Karsone	DSS
JoAnn Lamm	DSS
Jan Hamrick	DSS
Chuck Harris	DSS
Linda Pope	SOS
Charlene P. Hawkins	SOS
Gayle P. Holder	SOS
Frank Lewis	SOS
R. Paul Wilms	NCHBA
Kristen Guillory	DSS
Joan McAlister	DSS
ANA DIAL	AOC

VISITOR REGISTRATION SHEET

Horse Pasture — 9/1/97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kevin FitzGerald	NC DSS
Clem Tillon	D&C
John S. Anson	Wood & Francis for ALCOA
DAVID GORDON	A.G's office
Paul Zepin	OSBM
Cam Cole	BPMI LLC
Thomas Vance Bennett	NC Child Fatality Task Force
Brock Murray	DPI - licensure
Ann Belam	SBE
Peggy Hapkins	DPI
Bernard Allen	SOS
Paul Stock	NCBA

VISITOR REGISTRATION SHEET

House Finance — 9/1/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Tom Andrews	AOC
Steve Woodson	NC Farm Bureau
Tom Fransen	DENR DWR
Roy Rogers	NCDOT
Marc Bernstein	AG's Office
Bill Scoggin	NC Bar Assoc.
Hal Miller	NCACCT
John Hunt	NCFPC
K Eng	CSA
Jane B. Gray	DOJ
Alicia Gregory	Poyner & Spruill
Mary Arnold	Poyner & Spruill

VISITOR REGISTRATION SHEET

Horse Power — Aug 18 '98 — AM

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS

VISITOR REGISTRATION SHEET

Horse Pasture — 9/1/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.
[illegible]	N.C.F.B.
AG	EC
[illegible]	NCPA
Laura DeVane	DENR
[illegible]	DENR
John Morris	DENR - Water Res.
VL McBride	NCSP
[illegible]	Moore & Van Allen
[illegible]	N.C. Natural Gas
[illegible]	
Linda Small	DENR

VISITOR REGISTRATION SHEET

Horse Pasture — 9/1/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NC Retail Assn
K. McKeithan	Cisco to NBS
Pam Seamans	United Way of NC
Suzanne Williams	NCCE
[signature]	N.C. Commission of Indian Affairs
Susan Valaani	Nationwide

MINUTES

COMMITTEE ON FINANCE

TUESDAY, AUGUST 25, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Tuesday, August 25, 1998, at 8:30 a.m. in Room 544. A silent roll was taken, (roll list denotes members present).

Chairman Brawley called the meeting to order.

SB-1552 CHANGES TO NOTARY PUBLIC ACT

Rep. Cunningham moved for adoption of the proposed committee substitute for discussion. So moved. Sen. Kerr explained the bill. Ms. Cindy Avrette, Research Division gave an additional explanation. Rep. Buchanan questioned the expiration date on the seal of a notary. Ms. Avrette explained. Rep. Dickson question Sen. Kerr and he replied. Rep. Cunningham questioned the consequences of overcharging and Ms. Gail Holder, Secretary of States Office responded. Mr. Tom Andrews, Office of the Clerk, addressed members and shared concerns. Sen. Kerr requested the bill be displaced until proper language could be worked out for the concerned areas. Questions continued by Rep. Capps and Rep. Ramsey so that all issues could be addressed before staff re-worked the language. Rep. Nesbitt added comments to Mr. Andrew's remarks. Rep. Buchanan asked about the $50 fee at renewal time. Sen. Kerr answered. Chairman Brawley displaced the bill until all parties concerned could work on more appropriate language.

HB-1385 PHARMACY PERSONNEL

Rep. Carpenter explained the bill. Rep. Hightower asked about the $25 fee. Rep. Carpenter responded. Rep. Hightower shared concerns about the fee. Rep. Womble asked what the fee was used for and who pays it. Rep. Carpenter responded. Rep. Dickson questioned the "supervision" of a technician and if that individual could fill a prescription in the absence of a pharmacist. Ms. Avrette and Mr. David Work, Executive Director of the Pharmacy Board, responded. Rep. Dickson made additional comments and shared concerns. Rep. Cole asked if there was opposition to this bill and Rep. Carpenter answered. He also asked how many technicians could work under a pharmacist. Mr. Work replied. Rep. Luebke questioned the registering of a "technician" and if this requires a stronger penalty than a pharmacist. Rep. Carpenter answered. Rep.

Cunningham asked if this applied to pharmacists and how many other states have technicians. Rep. Carpenter and Mr. Work responded.

Rep. Hackney moved for a favorable report.

Rep. Rayfield expressed concerns about technicians not having training. Rep. Hightower also expressed concerns. Rep. Jarrell spoke on the bill. Rep. Starnes questioned Mr. Work and he responded. Rep. Nichols spoke against the bill. Rep. Dickson spoke in favor of the bill.

Rep. Cunningham spoke again about training for a technician and asked staff to prepare an amendment. Chairman Brawley read the amendment. Rep. Cunningham urged adoption. Rep. Hensley and Rep. Hightower spoke on the amendment. Mr. Work addressed their comments. Rep. Dickson asked Rep. Cunningham if he would agree to a perfecting amendment to specify the amount of training in this be brought back in the 1999 session. Rep. Capps spoke on the amendment. Rep. Cunningham responded to Rep. Dickson's comments on a perfecting amendment. Rep. Dickson spoke again. Rep. Barefoot spoke. Chairman Brawley read the perfecting amendment. Rep. Starnes urged caution before proceeding with this amendment. Rep. Beall was concerned that technicians would still be employed before they receive proper training. Chairman Brawley made comments. Rep. Hightower asked Rep. Dickson how this would affect the fees. Rep. Dickson responded. Rep. Cunningham spoke again and asked staff if this perfecting amendment still includes the fees. Ms. Avrette responded. Rep. Cunningham spoke again. Rep. Dickson asked Mr. Work if they would be in agreement with this and he responded. Rep. Hill asked Mr. Work about a tracking system and he responded.

The vote was taken on the amendment and it passed.

The vote was taken on the bill and it was given a favorable report, unfavorable to the original bill.

SB-425 REFRIGERATION CONTRACTORS

Rep. McMahan sent forth a proposed committee substitute and moved for adoption for discussion. So moved. Sen. Mill explained.

Rep. McMahan sent forth an amendment and urged adoption. The vote was taken and the amendment was adopted.

Rep. Dickson sent forth an amendment. The vote was taken and it was adopted.

Rep. Neely moved for a favorable report, unfavorable to the original bill and Chairman Brawley added that it be referred to the Committee on Rules. The vote was taken and passed.

The meeting adjourned at 9:50 and Chairman Brawley announced we would meet again after session.

Chairman Brawley called the meeting back to order at 2:40 p.m.

SB-1336 DWI AMENDMENTS

Rep. Hackney explained the bill for Sen. Odom. Rep. Hightower questioned the commercial license section.

Rep. Hackney sent forth an amendment, explained and urged adoption. Rep. Jarrell questioned the punishment for a Class III misdemeanor. Ms. Jo McCants, Research Division responded. The vote was taken and the amendment was adopted.

Rep. Hensley sent forth an amendment, explained and urged adoption. Rep. Hackney supports the amendment. Rep. Buchanan spoke on the amendment. Rep. Capps questioned Rep. Hackney and he responded. Rep. Capps spoke again in support of the amendment. Ms. Leighann Winner, NC School Boards Association addressed members. The vote was taken and the amendment was adopted.

Discussion continued with Rep. Capps making additional comments. Ms. Winner addressed his comments. Rep. Nesbitt questioned the zero tolerance provision. Mr. Walker Reagan, Research Division responded. Rep. Cole questioned the "fare market value of a vehicle". Mr. Reagan explained. Rep. Cole made additional comments. Rep. Hackney spoke again. Rep. Cole was still concerned. Mr. Reagan addressed his concerns. Rep. Dickson questioned the sponsor and he answered. Rep. Carpenter spoke in favor of the bill. He also asked about the school board's storage and how sales will be contracted. Ms. Winner addressed this issue. Rep. Cunningham spoke and shared concerns. Rep. Hackney responded to his comments. Rep. Luebke had questions for Ms. Winner and she answered. Rep. Womble questioned staff and Mr. Reagan responded. Rep. Womble then had a series of questions for Rep. Hackney and responded.

Rep. Nesbitt moved for a favorable report, unfavorable to the original bill.

Rep. Dedmon questioned the use of alcohol in medications. Rep. Hackney responded. Rep. Barefoot questioned personal property in a seized vehicle. Rep. Hackney replied. Mr. Virgil McBride, NCTA, addressed members. Rep. Hightower continued with concerns/comments. Rep. Hensley spoke again. Rep. Brown asked about contracting sales of vehicles and Ms. Winner responded. Rep. Nesbitt spoke on the bill. Rep. Cole questioned how many cars had been sold this year. Ms. Winner answered. Rep. Hackney spoke again.

The vote was taken and passed as moved.

The meeting adjourned at 3:50 p.m.

Robert Brawley
Rep. Brawley, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

TUESDAY, AUGUST 25, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Brawley

BILLS FOR DISCUSSION:

HB-1385	Pharmacy Personnel	Rep. Carpenter
SB-425	Refrigeration Contractors	Sen. Miller
SB-1336	1998 Gov. DWI Amendments	Sen. Odom
SB-1552	Changes to Notary Public Act	Sen. Kerr

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1385*

Short Title: Pharmacy Personnel. (Public)

Sponsors: Representatives Carpenter; Black and Yongue.

Referred to: State Government.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO DEFINE PHARMACY PERSONNEL, PHARMACY TECHNICIANS, AND ALLOW THE BOARD OF PHARMACY TO REGISTER PHARMACY TECHNICIANS AND CHARGE A FEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.3 is amended by adding two new subsections to read:

"(q1) 'Pharmacy personnel' means pharmacists and pharmacy technicians.

(q2) 'Pharmacy technician' means unlicensed persons who spend the majority of their time dispensing as aides to and under the supervision of a pharmacist and are registered with the Board in accordance with G.S. 90-85.15A."

Section 2. Article 4A of Chapter 90 is amended by adding a new section to read:

"**§ 90-85.15A. Pharmacy technicans; registration.**

Pharmacy technicians shall register annually with the Board in accordance with rules adopted by the Board pursuant to Chapter 150B of the General Statutes. Pharmacy technicians shall also pay the registration fee in accordance with G.S. 90-85.24."

Section 3. G.S. 90-85.21(a) reads as rewritten:

"**§ 90-85.21. Pharmacy permit.**

(a) In accordance with Board regulations, each pharmacy in North Carolina shall annually register with the Board on a form provided by the Board. The application

shall identify the pharmacist-manager of the pharmacy and all ~~pharmacist~~ pharmacy personnel employed in the pharmacy. All pharmacist-managers shall notify the Board of any change in ~~pharmacist~~ pharmacy personnel within 30 days of such change."

Section 4. G.S. 90-85.24 reads as rewritten:

"**§ 90-85.24. Fees collectible by Board.**

The Board of Pharmacy shall be entitled to charge and collect not more than the following fees: for the examination of an applicant for license as a pharmacist, one hundred sixty dollars ($160.00) plus the cost of the test material; for renewing the license as a pharmacist, one hundred ten dollars ($110.00); for renewing the license of an assistant pharmacist, ten dollars ($10.00); for licenses without examination as provided in G.S. 90-85.20, original, four hundred dollars ($400.00); for original registration of a pharmacy, three hundred fifty dollars ($350.00), and renewal thereof, one hundred seventy-five dollars ($175.00); for annual registration as a dispensing physician under G.S. 90-85.21(b), fifty dollars ($50.00); for annual registration as a dispensing physician assistant under G.S. 90-18.1, fifty dollars ($50.00); for annual registration as a dispensing nurse practitioner under G.S. 90-18.2, fifty dollars ($50.00); for the annual registration of pharmacy technicians, twenty-five dollars ($25.00); ~~for registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), twenty-five dollars ($25.00);~~ for a duplicate of any license, permit, or registration issued by the Board, twenty-five dollars ($25.00); for registration to dispense devices, deliver medical equipment, or both, three hundred dollars ($300.00) per year. All fees shall be paid before any applicant may be admitted to examination or the applicant's name may be placed upon the register of ~~pharmacists~~ pharmacy personnel, or before any license or permit, or any renewal thereof, may be issued by the Board."

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

EXPLANATION OF HOUSE BILL 1385:
Pharmacy Personnel

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 24, 1998
SPONSOR: Representative Carpenter

The Joint Legislative Administrative Procedure Oversight Committee recommended **House Bill 1385** to the 1998 General Assembly. House Bill 1385 received a favorable report from the State Government Committee on August 10, 1998. Its companion bill, Senate Bill 1200, passed the Senate on June 10, 1998, and was referred to the House Insurance Committee on June 15, 1998.

House Bill 1385 amends the Pharmacy Practice Act to accomplish what the Board intended to accomplish in S.L. 1997-239. It defines "pharmacy technicians" and authorizes the Board of Pharmacy to register pharmacy technicians and impose a $25 registration fee on them.

Last session, the General Assembly authorized the Board of Pharmacy to charge and collect "*for the registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), twenty-five dollars ($25.00).*" Based upon that legislation, the Board, through its rule-making power, defined the term "pharmacy technician", required pharmacy technicians to be registered with the Board, and charged pharmacy technicians an annual $25.00 registration fee.

After studying the Pharmacy Practice Act, the Joint Legislative Administrative Procedure Oversight Committee found that the Board did not have the statutory authority to adopt administrative rules defining or registering pharmacy technicians and that it did not have the statutory authority to charge pharmacy technicians an annual $25 registration fee. G.S. 90-85.21(a), the statute upon which the Board relied when it developed its rules, requires each pharmacy to identify the pharmacist-manager and all pharmacist personnel. The Act defines the terms "pharmacist" as a person licensed to practice pharmacy. The Act does not define "pharmacist personnel". At the insistence of the Administrative Procedure Oversight Committee, the Board mailed refund checks to the persons from whom it collected this $25 fee on May 28 and 29, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1385 (First Edition)

SHORT TITLE: Pharmacy Personnel

SPONSOR(S): Representative Carpenter

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Pharmacy Operating Acct.	$106,500	$106,500	$106,500	$106,500	$106,500
EXPENDITURES	To be determined by Board				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Pharmacy

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: The act defines pharmacy personnel and pharmacy technicians. The act also allows the Board of Pharmacy to register pharmacy technicians and a charge them a $25 fee.

ASSUMPTIONS AND METHODOLOGY:
In 1997 and 1998, the Board of Pharmacy collected $106,500 in fees by registering 4,260 unlicensed pharmacy personnel. The Joint Legislative Administrative Procedure Oversight Committee reviewed the $25 fee on pharmacy technicians and found that the Board of Pharmacy had no statutory authority to charge the fee. The fees were refunded on May 28 and 29, 1998. This bill gives the Board of Pharmacy the statutory authority to charge a $25 registration fee for pharmacy technicians. The note assumes the same 4,260 personnel licensed in 1997 and 1998 will be licensed again in FY 1998-99. Since no estimate is available on the growth rate in this profession, the revenue for future years is equal to FY 1998-99.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: August 24, 1998

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1385

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1385-ARB-8/25

Date 8/25/98 ,1998

Comm. Sub. []
Amends Title [YES]

Representative Dickson

moves to amend the bill on page 1, line 4, by rewriting the line to read:
"TO DEFINE PHARMACY PERSONNEL AND PHARMACY TECHNICIANS, TO";

and on page 1, line 6, by rewriting the line to read:
"TECHNICIANS, AND TO DIRECT THE BOARD OF PHARMACY TO STUDY THE NEED FOR A TRAINING PROGRAM FOR PHARMACY TECHNICIANS.";

and on page 1, line 18, by inserting a quotation mark at the end of that line;

and on page 1, lines 19 and 20, by deleting those lines;

and on page 2, lines 17 and 18, by deleting the phrase "for the annual registration of pharmacy technicians, twenty-five dollars ($25.00);";

and on page 2, line 26, by rewriting the line to read:
"Section 5. The Board of Pharmacy shall study the need for a training program for pharmacy technicians and report its findings to the 1999 Regular Session of the 1999 General Assembly.
Section 6. This act is effective when it becomes law.".

SIGNED W Dickson
Amendment Sponsor

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1385

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1385-ARB-8/25 Page 2 of __

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1385*
Proposed Committee Substitute H1385-PCS3186-RB

Short Title: Pharmacy Personnel. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO DEFINE PHARMACY PERSONNEL AND PHARMACY TECHNICIANS, TO ALLOW THE BOARD OF PHARMACY TO REGISTER PHARMACY TECHNICIANS, AND TO DIRECT THE BOARD OF PHARMACY TO STUDY THE NEED FOR A TRAINING PROGRAM FOR PHARMACY TECHNICIANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.3 is amended by adding two new subsections to read:

"(q1) 'Pharmacy personnel' means pharmacists and pharmacy technicians.

(q2) 'Pharmacy technician' means unlicensed persons who spend the majority of their time dispensing as aides to and under the supervision of a pharmacist and are registered with the Board in accordance with G.S. 90-85.15A."

Section 2. Article 4A of Chapter 90 is amended by adding a new section to read:

"**§ 90-85.15A. Pharmacy technicians; registration.**

Pharmacy technicians shall register annually with the Board in accordance with rules adopted by the Board pursuant to Chapter 150B of the General Statutes."

Section 3. G.S. 90-85.21(a) reads as rewritten:

"**§ 90-85.21. Pharmacy permit.**

(a) In accordance with Board regulations, each pharmacy in North Carolina shall annually register with the Board on a form provided by the Board. The application shall identify the pharmacist-manager of the pharmacy and all ~~pharmacist~~ pharmacy personnel employed in the pharmacy. All pharmacist-managers shall notify the Board of any change in ~~pharmacist~~ pharmacy personnel within 30 days of such change."

Section 4. G.S. 90-85.24 reads as rewritten:

"**§ 90-85.24. Fees collectible by Board.**

The Board of Pharmacy shall be entitled to charge and collect not more than the following fees: for the examination of an applicant for license as a pharmacist, one hundred sixty dollars ($160.00) plus the cost of the test material; for renewing the license as a pharmacist, one hundred ten dollars ($110.00); for renewing the license of an assistant pharmacist, ten dollars ($10.00); for licenses without examination as provided in G.S. 90-85.20, original, four hundred dollars ($400.00); for original registration of a pharmacy, three hundred fifty dollars ($350.00), and renewal thereof, one hundred seventy-five dollars ($175.00); for annual registration as a dispensing physician under G.S. 90-85.21(b), fifty dollars ($50.00); for annual registration as a dispensing physician assistant under G.S. 90-18.1, fifty dollars ($50.00); for annual registration as a dispensing nurse practitioner under G.S. 90-18.2, fifty dollars ($50.00); ~~for registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), twenty-five dollars ($25.00);~~ for a duplicate of any license, permit, or registration issued by the Board, twenty-five dollars ($25.00); for registration to dispense devices, deliver medical equipment, or both, three hundred dollars ($300.00) per year. All fees shall be paid before any applicant may be admitted to examination or the applicant's name may be placed upon the register of ~~pharmacists~~ pharmacy personnel, or before any license or permit, or any renewal thereof, may be issued by the Board."

Section 5. The Board of Pharmacy shall study the need for a training program for pharmacy technicians and report its findings to the 1999 Regular Session of the 1999 General Assembly.

Section 6. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☐ Committee Substitute for
H.B. 1385 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO DEFINE PHARMACY PERSONNEL, PHARMACY TECHNICIANS, AND ALLOW THE BOARD OF PHARMACY TO REGISTER PHARMACY TECHNICIANS AND CHARGE A FEE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 425
Proposed House Committee Substitute S425-PCS6872-LB2

Short Title: Refrig. Contractor/CPA Examiners. (Public)

Sponsors:

Referred to:

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ARTICLE ON REFRIGERATION CONTRACTOR AND RELATING TO THE CONVEYANCE OF PROPERTY BY THE NORTH CAROLINA BOARD OF CPA EXAMINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-58(a) reads as rewritten:

"(a) As applied in this Article, 'refrigeration trade or business' is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political ~~subdivisions, provided however, that this~~ subdivisions. This Article shall not apply to the replacement of lamps and fuses and to the installation and servicing of domestic household refrigerators and freezers or domestic ice-making appliances connected by means of attachment plug-in devices to suitable receptacles which have been permanently ~~installed, and provided, further, that the~~ installed. The provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes. ~~North Carolina General Statutes, Chapter 87, Article 2; and provided, further, that this~~ This Article shall not apply to employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices. The provisions of this Article shall not apply to

any person, firm or corporation engaged in the business of selling, repairing and installing any ~~air-conditioning units,~~ comfort cooling devices or ~~systems~~ systems. ~~for the purpose of cooling offices, buildings, houses, works, manufacturing plants, or any machinery, manufactured article or processing of material.~~"

Section 2. G.S. 87-58(d) reads as rewritten:

"(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as they pertain to refrigeration; and as a result of the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year and additional examinations may be given at times the Board deems wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding the examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for the examination. ~~A person who fails to pass any examination shall not be reexamined until the next regular examination.~~"

Section 3. G.S. 87-60 reads as rewritten:

"**§ 87-60. Reissuance of revoked licenses; replacing lost or destroyed licenses.**

The Board may in its discretion reissue license to any person, firm or corporation whose license ~~may have been revoked: Provided, three or more members~~ was revoked if a majority of the Board ~~vote~~ votes in favor of such reissuance for reasons deemed sufficient by the Board. A new certificate of registration to replace any license which may be lost or destroyed may be issued subject to the rules and regulations of the Board."

Section 4. G.S. 87-62 reads as rewritten:

"**§ 87-62. Only one person in partnership or corporation need have license.**

(a) A corporation or partnership may engage in the business of refrigeration contracting ~~provided~~ if one or more persons connected with ~~such~~ the corporation or partnership is registered and licensed as herein ~~required; and provided such~~ required, and the licensed person ~~shall execute~~ executes all contracts, ~~exercise~~ exercises general supervision over the work done thereunder and ~~be~~ is responsible for compliance with all the provisions of this Article. The Board may determine the number of businesses

and the proximity of the businesses one to another over which the licensed person may be responsible.

(b) For purposes of this section, the licensee's connection to the corporation or partnership shall be in the form of a written contract that is executed prior to the corporation or partnership engaging in refrigeration contracting.

(c) Nothing in this Article shall prohibit any employee from becoming licensed pursuant to the provisions thereof."

Section 5. G.S. 87-64 reads as rewritten:

"**§ 87-64. Examination and license fees; annual renewal.**

Each applicant for a license by examination shall pay to the Board of Refrigeration Examiners a nonrefundable examination fee in an amount not to exceed the sum of forty dollars ($40.00). In the event the applicant successfully passes ~~said~~ the examination, the examination fee ~~so paid~~ shall be applied to the license fee required of licensees for the current year in which the examination was taken and passed.

The license of every person licensed under the provisions of this statute shall be annually renewed. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee in an amount not to exceed forty dollars ($40.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows ~~his~~ the license to lapse may be reinstated by the Board upon payment of a fee not to exceed ~~forty-five dollars ($45.00); provided any~~ seventy-five dollars ($75.00). Any person who fails to renew ~~his~~ a license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business."

Section 6. G.S. 93-12 is amended by adding a new subdivision to read:

"(17) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 425
Proposed House Committee Substitute S425-PCS6872-LB2

Short Title: Refrig. Contractor/CPA Examiners. (Public)

Sponsors:

Referred to:

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ARTICLE ON REFRIGERATION CONTRACTOR AND RELATING TO THE CONVEYANCE OF PROPERTY BY THE NORTH CAROLINA BOARD OF CPA EXAMINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-58(a) reads as rewritten:

"(a) As applied in this Article, 'refrigeration trade or business' is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political ~~subdivisions, provided however, that this~~ subdivisions. This Article shall not apply to the replacement of lamps and fuses and to the installation and servicing of domestic household refrigerators and freezers or domestic ice-making appliances connected by means of attachment plug-in devices to suitable receptacles which have been permanently ~~installed, and provided, further, that the~~ installed. The provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes. ~~North Carolina General Statutes, Chapter 87, Article 2; and provided, further, that this~~ This Article shall not apply to employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices. The provisions of this Article shall not apply to

any person, firm or corporation engaged in the business of selling, repairing and installing any ~~air-conditioning units,~~ comfort cooling devices or ~~systems~~ systems. ~~for the purpose of cooling offices, buildings, houses, works, manufacturing plants, or any machinery, manufactured article or processing of material.~~"

Section 2. G.S. 87-58(d) reads as rewritten:

"(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as they pertain to refrigeration; and as a result of the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year and additional examinations may be given at times the Board deems wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding the examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for the examination. ~~A person who fails to pass any examination shall not be reexamined until the next regular examination.~~"

Section 3. G.S. 87-60 reads as rewritten:

"**§ 87-60. Reissuance of revoked licenses; replacing lost or destroyed licenses.**

The Board may in its discretion reissue license to any person, firm or corporation whose license ~~may have been revoked: Provided, three or more members~~ was revoked if a majority of the Board ~~vote~~ votes in favor of such reissuance for reasons deemed sufficient by the Board. A new certificate of registration to replace any license which may be lost or destroyed may be issued subject to the rules and regulations of the Board."

Section 4. G.S. 87-62 reads as rewritten:

"**§ 87-62. Only one person in partnership or corporation need have license.**

(a) A corporation or partnership may engage in the business of refrigeration contracting ~~provided~~ if one or more persons connected with ~~such~~ the corporation or partnership is registered and licensed as herein ~~required; and provided such~~ required, and the licensed person ~~shall execute~~ executes all contracts, ~~exercise~~ exercises general supervision over the work done thereunder and ~~be~~ is responsible for compliance with all the provisions of this Article. The Board may determine the number of businesses

and the proximity of the businesses one to another over which the licensed person may be responsible.

(b) For purposes of this section, the licensee's connection to the corporation or partnership shall be in the form of a written contract that is executed prior to the corporation or partnership engaging in refrigeration contracting.

(c) Nothing in this Article shall prohibit any employee from becoming licensed pursuant to the provisions thereof."

Section 5. G.S. 87-64 reads as rewritten:

"**§ 87-64. Examination and license fees; annual renewal.**

Each applicant for a license by examination shall pay to the Board of Refrigeration Examiners a nonrefundable examination fee in an amount not to exceed the sum of forty dollars ($40.00). In the event the applicant successfully passes ~~said~~ the examination, the examination fee ~~so paid~~ shall be applied to the license fee required of licensees for the current year in which the examination was taken and passed.

The license of every person licensed under the provisions of this statute shall be annually renewed. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee in an amount not to exceed forty dollars ($40.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows ~~his~~ the license to lapse may be reinstated by the Board upon payment of a fee not to exceed ~~forty-five dollars ($45.00); provided any~~ seventy-five dollars ($75.00). Any person who fails to renew ~~his~~ a license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business."

Section 6. G.S. 93-12 is amended by adding a new subdivision to read:

"(17) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 425

Short Title: Refrigeration Contractors. (Public)

Sponsors: Senator Miller.

Referred to: Commerce.

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ARTICLE ON REFRIGERATION CONTRACTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-58(a) reads as rewritten:

"(a) As applied in this Article, "refrigeration trade or business" is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political ~~subdivisions, provided however, that this~~ subdivisions. This Article shall not apply to the replacement of lamps and fuses and to the installation and servicing of domestic household refrigerators and freezers or domestic ice-making appliances connected by means of attachment plug-in devices to suitable receptacles which have been permanently ~~installed, and provided, further, that the~~ installed. The provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes. ~~North Carolina General Statutes, Chapter 87, Article 2; and provided, further, that this~~ This Article shall not apply to employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices. The provisions of this Article shall not apply to any person, firm or corporation engaged in the business of selling, repairing and installing any ~~air-conditioning units,~~ comfort cooling devices or ~~systems~~ systems. ~~for~~

~~the purpose of cooling offices, buildings, houses, works, manufacturing plants, or any machinery, manufactured article or processing of material.~~"

Section 2. G.S. 87-58(d) reads as rewritten:

"(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as they pertain to refrigeration; and as a result of the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year and additional examinations may be given at times the Board deems wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding the examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for the examination. ~~A person who fails to pass any examination shall not be reexamined until the next regular examination.~~"

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The license of every person licensed under the provisions of this statute shall be annually renewed. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee in an amount not to exceed forty dollars ($40.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows ~~his~~ the license to lapse may be reinstated by the Board upon payment of a fee not to exceed ~~forty-five dollars ($45.00); provided any~~ seventy-five dollars ($75.00). Any person who fails to renew ~~his~~ a license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business."

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 425

Short Title: Refrigeration Contractors. (Public)

Sponsors: Senator Miller.

Referred to: Commerce.

March 19, 1997

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"(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as they pertain to refrigeration; and as a result of the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year and additional examinations may be given at times the Board deems wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding the examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for the examination. ~~A person who fails to pass any examination shall not be reexamined until the next regular examination.~~"

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The license of every person licensed under the provisions of this statute shall be annually renewed. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee in an amount not to exceed forty dollars ($40.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows ~~his~~ the license to lapse may be reinstated by the Board upon payment of a fee not to exceed ~~forty-five dollars ($45.00); provided any~~ seventy-five dollars ($75.00). Any person who fails to renew ~~his~~ a license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business."

Section 6. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 425 (House Finance Committee Substitute)

SHORT TITLE: Refrigeration Contractors

SPONSOR(S):

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Board of Refrigeration Examiners Operating Fund	$3,750	$3,750	$3,750	$3,750	$3,750

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Board of Refrigeration Examiners; Board of Certified Public Accountant Examiners

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: For the Board of Refrigeration Examiners, the bill increases the fee for reinstating a lapsed license from $45 to $75 and makes other minor changes to the law on refrigeration contractors. For the Board of Certified Public Accountant Examiners, the bill grants the authority to acquire property subject to the approval of the Governor and the Council of State.

ASSUMPTIONS AND METHODOLOGY:

Board of Refrigeration Examiners

In 1995, 14.3% (310 out of 2,163) of the refrigeration contractors did not pay their $40 license renewal fee on time and allowed their licenses to lapse. In 1996, 13.3% (294 out of 2,206) of the contractors allowed their licenses to lapse. To regain their licenses, these contractors paid a $45 reinstatement fee. The Executive Director of the State Board of Refrigeration Examiners believes an increase in the reinstatement fee is needed to reduce the number of lapsed licenses. The Executive Director believes that the increase from $45 to $75 will cut the number of lapsed licenses in half. The revenue gained from this change is calculated as follows:

Average number of lapsed licenses each year = 300

Current law	300 X $45 = $13,500	Proposed law	150 X $40 = $6,000
			150 X $75 = $11,250
			$17,250
Net Gain	**$3,750**		

Board of Certified Public Accountant Examiners

This provision gives the Board of Certified Public Accountant Examiners the same right to control its property transactions as the NC Medical Board (GS 90-2(e)) and the NC State Bar (GS 84-17). The Board will spend $59,510 in 1998 to lease 4,531 square feet of office space. With the passage of this act, the Board could buy an office condo or other suitable space and use its lease funds as annual payments on the property. The purchase of property will have a long term positive impact on the Board's finances.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: August 24, 1998

EXPLANATION OF SENATE BILL 425
Proposed House Committee Substitute:
Refrig. Contractor/CPA Examiners

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 24, 1998
SPONSOR: Senator Brad Miller

Senate Bill 425 amends the Article governing refrigeration contractors. This Article creates the State Board of Refrigeration Examiners and requires all persons, firms or corporations, whether resident or nonresident, to obtain a license before engaging in refrigeration business or contracting. The Bill was introduced in March, 1997, and given a favorable report in the Senate Commerce and Finance Committees. The Bill was received by the House in April, 1997, and given a favorable report in House Commerce. The proposed House Committee Substitute adds a new Section 6 to the Bill that amends the powers and duties of the State Board of Certified Public Accountant Examiners as set out in Chapter 93.

Section 1 makes several grammatical changes and redefines the exemption for persons installing air conditioning units, devices, and systems in houses, businesses, plants, etc., as persons installing "comfort cooling devices or systems."

Section 2 repeals a provision that prevents a person who fails the licensing exam from retaking the exam any earlier than the next regular scheduled examination. Regular exams are given in April and October each year. The Bill will allow the person to request a special exam as first-time takers can do.

Section 3 revises the language concerning reissuance of a license to a person whose license has been revoked. Current law requires three or more Board members to vote in favor of the reissuance in order for a person to obtain a reissued license. The Bill will require a majority of the Board (4 members of the 7-member Board).

Section 4. Current law allows a corporation or partnership to engage in the business of refrigeration contracting as long as a licensed contractor is in charge and exercises general supervision over all work Section 4 adds a provision that makes it clear that the State Board of Refrigeration Examiners can

determine how many businesses the licensed person in a business or corporation can supervise and their proximity to one another. In addition, the licensed person's connection to the business entity must be spelled out in a written contract before the business engages in refrigeration contracting.

Section 5 increases the maximum fee for reinstatement of a lapsed license from $45 to $75. Current law requires an examination fee not to exceed $40. If the applicant passes, the examination fee is applied to the license fee (an amount not to exceed $40). A licensee must renew his license on or before January 1 of each year and pay the renewal fee not to exceed $40.

Section 6 amends the Public Accountants Chapter by giving the State Board of Certified Public Accountant Examiners the power to deal with real property in the same manner as a private person or corporation. This power is subject only to the approval of the Governor and Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Any collateral pledged by the Board is limited to the Board's assets, income and revenues. Both the North Carolina Medical Board and the Council of the North Carolina State Bar have been given this power (G.S. 90-2(e) and G.S. 84-23).

Section 7 makes the act effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 425 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS6872-LB2

Rep.) McMahan
Sen.)

moves to amend the bill on page 2, line 28 and 29

( ) WHICH CHANGES THE TITLE

by adding a new section between those lines to read:

"Section 2.1. G.S. 87-58 is amended by adding a new subsection to read:

'(j) The Board in its discretion upon application may grant a reciprocal license to a person holding a valid, active substantially comparable license from another jurisdiction; provided, however, the other jurisdiction grants reciprocal privileges to North Carolina licensees.'"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 425 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS6872-LB2

Rep.) Dickson
Sen.)

moves to amend the bill on page 1, line 2

( ) WHICH CHANGES THE TITLE

by deleting the word "CONTRACTOR" and substituting the word "CONTRACTORS".

SIGNED W Dickson

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 425 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS 12-102

Rep.)
) D. Hise
Sen.)

1 moves to amend the bill on page 1, line 2

2 ( ) WHICH CHANGES THE TITLE

3 by [illegible] CONTRACTS"

4 [illegible] CONTRACTORS".

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 425
Proposed House Committee Substitute S425-PCS4712-LA001

Short Title: Refrig. Contractor/CPA Examiners. (Public)

Sponsors:

Referred to:

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ARTICLE ON REFRIGERATION CONTRACTORS AND RELATING TO THE CONVEYANCE OF PROPERTY BY THE NORTH CAROLINA BOARD OF CPA EXAMINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-58(a) reads as rewritten:

"(a) As applied in this Article, 'refrigeration trade or business' is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political ~~subdivisions, provided however, that this~~ subdivisions. This Article shall not apply to the replacement of lamps and fuses and to the installation and servicing of domestic household refrigerators and freezers or domestic ice-making appliances connected by means of attachment plug-in devices to suitable receptacles which have been permanently ~~installed, and provided, further, that the~~ installed. The provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes. ~~North Carolina General Statutes, Chapter 87, Article 2; and provided, further, that this~~ This Article shall not apply to employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices. The provisions of this Article shall not apply to

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1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 425 A BILL TO BE ENTITLED AN ACT TO AMEND THE ARTICLE ON REFRIGERATION CONTRACTORS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 5

SENATE BILL 1336*
Judiciary Committee Substitute Adopted 7/21/98
Finance Committee Substitute #2 Adopted 8/3/98
Fourth Edition Engrossed 8/4/98
House Committee Substitute Favorable 8/12/98

Short Title: 1998 Gov. DWI Amendments. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES, AND CHILD CARE VEHICLES; AND TO PROVIDE FOR IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER TWENTY-ONE YEARS OF AGE; AND TO INCREASE THE FINES FOR DWI OFFENSES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. DWI FORFEITURE REVISIONS.

Section 1. G.S. 20-4.01(1b) reads as rewritten:

"(1b) Alcohol Concentration. -- The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be

reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth."

Section 1.1. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. ~~Second~~ First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 2. G.S. 20-28.2 reads as rewritten:

"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's ~~driver's~~ drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), ~~or 20-17.2;~~ 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or~~ 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired driving.

(a1) ~~[Definitions.]~~ Definitions. -- As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, ~~and 20-28.6,~~ 20-28.7, 20-28.8, and 20-28.9, the following terms mean:

(1) Acknowledgment. -- A written document acknowledging that:

a. The motor vehicle was operated by a person charged with an offense involving impaired driving while that person's drivers license was revoked as a result of a prior impaired drivers license revocation;

b. If the motor vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, and the person is charged with an offense involving impaired driving, the motor vehicle is subject to impoundment and forfeiture; and

c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(1a) Fair Market Value. -- The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.

(2) Innocent ~~Party~~ Owner. -- A motor vehicle ~~owner who:~~ owner:

a. ~~Did not~~ Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. ~~Knew~~ Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission;

c. Whose vehicle was reported stolen;

d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

e. Who is in the business of renting vehicles, the driver is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.

(2a) Insurance Company. -- Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.

(2b) Insurance Proceeds. -- Proceeds paid under an insurance policy for damage to a seized motor vehicle less any payments actually paid to valid lienholders and for towing and storage costs incurred for the motor vehicle after the time the motor vehicle became subject to seizure.

(3) Lienholder. -- A person who holds a perfected security interest in a motor vehicle at the time of seizure.

(3a) Motor Vehicle Owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.

(4) Order of Forfeiture. -- An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor vehicle and any insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

~~(5) Possessory Lien. -- A lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to this lien shall not exceed five dollars ($5.00) per day.~~

(6) Registered Owner. -- A person in whose name a registration card for a motor vehicle is ~~issued.~~ issued at the time of seizure.

~~(7) Vehicle Owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued.~~

(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. -- If at a sentencing hearing ~~conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(e)(2) applies,~~ for the underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside, the judge determines by the greater weight of the evidence that the defendant is guilty of an offense involving impaired driving and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense ~~of impaired driving~~ becomes property subject to an order of forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. -- In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this ~~section,~~ section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall ~~determine the identity of every vehicle owner. The prosecutor shall also determine if there are any lienholders noted on the vehicle's certificate of title. The State shall~~ notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least ~~fourteen~~ 10 days before the hearing at which an order of forfeiture may be entered.

(c1) Motor Vehicles Involved in Accidents. -- If a motor vehicle subject to forfeiture was damaged while the defendant operator was committing the underlying offense involving impaired driving, or was damaged incident to the seizure of the motor vehicle, the Division shall determine the name of any insurance companies that are the insurers of record with the Division for the motor vehicle at the time of

the seizure or that may otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle was involved in an accident, the Division shall notify the insurance companies that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of superior court of the county where the motor vehicle driver was charged to be held and disbursed pursuant to further orders of the court. Any insurance company that receives written or other actual notice of seizure pursuant to this section shall not be relieved of any legal obligation under any contract of insurance unless the claim for property damage to the seized motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The insurance company paying insurance proceeds to the clerk of court pursuant to this section shall be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds pursuant to further orders of the court.

(d) ~~Duty of Judge.~~ Forfeiture Hearing. -- ~~The trial judge~~ Unless a motor vehicle that has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the ~~operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section.~~ underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a separate forfeiture hearing held not less than 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside. If at the ~~sentencing hearing, or at a subsequent~~ forfeiture hearing, the judge determines that the ~~requirements of subsections (a) through (e) of this section exist and the defendant was the only motor vehicle owner at the time of the offense,~~ motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a ~~subsequent~~ forfeiture hearing, the judge determines that the ~~requirements of subsections (a) through (e) of this section exist and the defendant was not the only vehicle owner at the time of the offense,~~ motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the evidence, that such motor vehicle owner is an innocent ~~party~~ owner as defined ~~by subdivision (a1)(2) of~~ in this section, in which case the trial judge shall order the motor vehicle released to the innocent ~~party vehicle~~ owner pursuant to the provisions of subsection (e) of this section. In any case where the motor vehicle is ordered forfeited, the judge ~~shall either:~~ shall:

(1) a. Authorize the ~~school board to sell~~ sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use pursuant to G.S. 20-28.5; or

~~(2)~~ b. ~~Release~~ Order the motor vehicle released to ~~an intervening~~ a lienholder pursuant to the provisions of subsection ~~(g)~~ (f) of this ~~section.~~ section; and

(2) a. Order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education; and

b. Order any outstanding insurance claims be assigned to the county board of education in the event the motor vehicle has been damaged in an accident incident to the seizure of the motor vehicle.

If the judge determines that the ~~requirements of subsection (a) and (b) of this section exist~~ motor vehicle is subject to forfeiture pursuant to this section, but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

(e) ~~Return~~ Release of Vehicle to Innocent Motor Vehicle Owner. -- ~~If~~ At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) ~~that~~ the petitioner is an ~~"innocent party",~~ 'innocent owner', as defined by this section, a judge shall order the motor vehicle ~~returned~~ released to ~~the~~ that ~~owner.~~ owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

~~This release~~ Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this Chapter; and

~~(3) The payment of towing and storage fees; fees, except in the case of release to an innocent vehicle owner; and~~

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was

revoked unless the innocent ~~vehicle~~ owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

(f) Release to Lienholder. -- ~~The~~ At a forfeiture hearing, the trial judge shall order a forfeited motor vehicle released to the lienholder upon payment of all towing and storage charges incurred as a result of the seizure of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) The lienholder's interest ~~is equal to or greater than the fair market value of the vehicle;~~ has been perfected and appears on the title to the forfeited vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or to the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf;

(3) The forfeited motor vehicle had not previously been released to the ~~lienholder; and~~ lienholder;

(4) ~~The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.~~ The owner is in default under the terms of the security instrument evidencing the interest of the lienholder and as a consequence of the default the lienholder is entitled to possession of the motor vehicle; and

(5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder.

A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to the defendant, the vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner shall not be liable for damages arising out of such refusal. The defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf are prohibited from purchasing the motor vehicle at any sale conducted by the lienholder.

~~(g) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~"

Section 3. G.S. 20-28.3 reads as rewritten:

"**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license revoked.**

(a) ~~[Vehicles Subject to Seizure.]~~ Motor Vehicles Subject to Seizure. -- A motor vehicle that is driven by a person ~~in violation of G.S. 20-138.1 or G.S. 20-138.5~~ who is charged with an offense involving impaired driving is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).

(b) Duty of Officer. -- If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. ~~The officer shall cause to be issued written notification of impoundment to any vehicle owner who was not operating or present in the vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division records. This written notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall state the reason for the impoundment and the procedure for requesting release of the vehicle.~~ The seizing officer shall notify the ~~Division~~ executive agency designated under subsection (b1) of this section as soon as practical but no later than 72 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the ~~Division.~~ executive agency designated under subsection (b1) of this section. ~~Within 72 hours of the seizure of the vehicle the officer shall also cause notice of the impoundment and intent to forfeit the vehicle to be given to any lienholder of record with the Division.~~

(b1) Notification of Impoundment. -- Within 48 hours of receipt of the notice of seizure, an executive agency designated by the Governor shall issue written notification of impoundment to the Division, to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired

driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order.

(c) Review by Magistrate. -- Upon ~~seizing~~ determining that there is probable cause for seizing a motor vehicle, the seizing officer shall present to a magistrate within the county where the ~~vehicle was seized~~ driver was charged an affidavit of impoundment setting forth the basis upon which the motor vehicle has been or will be seized for forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the motor vehicle held. The magistrate may request additional information and may hear from the ~~operator~~ defendant if the ~~operator~~ defendant is present. If the magistrate determines the requirements of this section have not been met, the magistrate shall order the motor vehicle released to a motor vehicle owner upon payment of towing and storage fees. If the motor vehicle has not yet been seized, and the magistrate determines that seizure is appropriate, the magistrate shall issue an order of seizure of the motor vehicle. The magistrate shall provide a copy of the order of seizure to the clerk of court. The clerk shall provide copies of the order of seizure to the district attorney and the attorney for the county board of education.

(c1) Effecting an Order of Seizure. -- An order of seizure shall be valid anywhere in the State. Any officer with territorial jurisdiction and who has subject matter jurisdiction for violations of this Chapter may use such force as may be reasonable to seize the motor vehicle and to enter upon the property of the defendant to accomplish the seizure. An officer who has probable cause to believe the motor vehicle is concealed or stored on private property of a person other than the defendant may obtain a search warrant to enter upon that property for the purpose of seizing the motor vehicle.

(d) Custody of Motor Vehicle. -- ~~The~~ Unless the motor vehicle is towed pursuant to a statewide or regional contract, or a contract with the county board of education, the seized motor vehicle shall be towed by a commercial towing company designated by the law enforcement agency that seized the motor vehicle, ~~to a location designated by the county school board for the county in which the operator of the vehicle is charged and~~ Seized motor vehicles not towed pursuant to a statewide or regional contract or a contract with a county board of education shall be retrieved from the commercial towing company within a reasonable time, not to exceed 10 days, by the county board of education or their agent who must pay towing and storage fees to the commercial towing company when the motor vehicle is retrieved. If either a statewide or regional contractor, or the county board of education, chooses to contract for local towing services, all towing companies on the towing list for each law enforcement agency with jurisdiction within the county shall be given written notice and an opportunity to submit proposals prior to a contract for local towing services being awarded. The seized motor vehicle is ~~placed~~ under the constructive possession of the ~~school board~~ county board of education for the county in which the

operator of the vehicle is charged at the time the vehicle is delivered to a location designated by the county board of education or delivered to its agent pending release or ~~sale.~~ sale, or in the event a statewide or regional contract is in place, under the constructive possession of the Department of Public Instruction, on behalf of the State at the time the vehicle is delivered to a location designated by the Department of Public Instruction or delivered to its agent pending release or sale. ~~Each~~ Absent a statewide or regional contract that provides otherwise, each county ~~school board~~ board of education may elect to have seized motor vehicles stored on property owned or leased by the ~~school~~ county board of education and charge ~~no~~ a reasonable fee for ~~storage.~~ storage, not to exceed ten dollars ($10.00) per day. In the alternative, the county ~~school board~~ board of education may contract with a commercial towing and storage facility or other private entity for the ~~storage~~ towing, storage, and disposal of seized motor vehicles, and a storage fee of not more than ~~five~~ ten dollars ~~($5.00)~~ ($10.00) per day may be charged. Except for gross negligence or intentional misconduct, the county board of education, or any of its employees, shall not be liable to the owner or lienholder for damage to or loss of the motor vehicle or its contents, or to the owner of personal property in a seized vehicle, during the time the motor vehicle is being towed or stored pursuant to this subsection.

(e) Release of Motor Vehicle Pending Trial. -- A motor vehicle owner, ~~or a lienholder of a vehicle,~~ other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the motor vehicle.

The clerk shall release the motor vehicle to a ~~qualified~~ nondefendant motor vehicle owner ~~or a lienholder~~ conditioned upon payment of all towing and storage charges incurred as a result of seizure and impoundment of the motor vehicle under the following conditions:

(1) The motor vehicle has been ~~stored~~ seized for not less than 24 hours;

~~(2) All towing and storage charges have been paid;~~

(3) ~~Execution of a good and valid bond with sufficient sureties in an amount equal to twice the value of the seized vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3,~~ A bond in an amount equal to the fair market value of the motor vehicle as defined by G.S. 20-28.2 has been executed and is secured by a cash deposit in the full amount of the bond, by a recordable deed of trust to real property in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county school fund and conditioned on return of the motor vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of ~~trial of the operator;~~ any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released;

(4) ~~If a qualified vehicle owner, execution~~ Execution of an acknowledgment as described in G.S. 20-28.2(a1); ~~and~~

(5) A check of the records of the Division indicates that the requesting motor vehicle owner has not previously executed an acknowledgment naming the operator of the seized ~~vehicle.~~ motor vehicle; and

(6) A bond posted to secure the release of this motor vehicle under this subsection has not been previously ordered forfeited under G.S. 20-28.5.

In the event a nondefendant motor vehicle owner who obtains temporary possession of a seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of the forfeiture hearing as noticed by the district attorney under G.S. 20-28.3(c) or otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this subsection, the bond posted shall be ordered forfeited and an order of seizure shall be issued by the court. Additionally, a nondefendant motor vehicle owner or lienholder who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

(e1) Pretrial Release of Motor Vehicle to Innocent Owner. -- A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall schedule a hearing before a judge to be held within 10 business days or as soon as thereafter may be feasible. Notice of the hearing shall be given to the petitioner, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the petitioner is an innocent owner and that the motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the petitioner subject to the conditions of release as set forth in G.S. 20-28.2(e) and no hearing shall be held. The clerk shall send a copy of the order of release to the county board of education attorney. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. Accordingly, the State shall not be required to prove the underlying offense of impaired driving or the existence of a prior drivers license revocation. If the court determines that the petitioner is an innocent owner, the court shall release the motor vehicle to the petitioner subject to the same conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). An order issued under this subsection finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e2) Pretrial Release of Motor Vehicle to Defendant Owner. -- A defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired

driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the defendant's motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the defendant upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle, subject to the satisfactory proof of the identity of the defendant as a motor vehicle owner and the existence of financial responsibility to the extent required by Article 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy of the order of release to the attorney for the county board of education. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of the underlying offense of impaired driving only the existence of a prior drivers license revocation as an impaired driving license revocation. Accordingly, the State shall not be required to prove the underlying offense of impaired driving. An order issued under this subsection finding that the defendant failed to establish that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a) may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e3) Pretrial Release of Motor Vehicle to Lienholder. -- A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) Default on the obligation secured by the motor vehicle has occurred;

(2) As a consequence of default, the lienholder is entitled to possession of the motor vehicle;

(3) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the

sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;

(4) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or the motor vehicle owner; and

(5) The forfeited motor vehicle had not previously been released to the lienholder.

The clerk of superior court may order a seized vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle at any time when all interested parties have, in writing, waived any rights that they may have to notice and a hearing, and the lienholder has agreed to the provision of subdivision (4) above. A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to:

(1) The defendant;

(2) The motor vehicle owner who owned the motor vehicle immediately prior to forfeiture; or

(3) Any person acting on the behalf of the defendant or the motor vehicle owner,

shall not be liable for damages arising out of such refusal. However, any subsequent violation of the conditions of release by the lienholder shall be punishable by civil or criminal contempt.

~~(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.~~

~~(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~

(h) Insurance Proceeds. -- In the event a motor vehicle is damaged incident to the conduct of the defendant which gave rise to the defendant's arrest and seizure of the motor vehicle pursuant to this section, the county board of education, or its authorized designee, is authorized to negotiate the county board of education's interest with the insurance company and to compromise and accept settlement of any claim for damages. Property insurance proceeds accruing to the defendant, or other owner of the seized motor vehicle, shall be paid by the responsible insurance company directly to the clerk of superior court in the county where the motor vehicle driver was charged. If the motor vehicle is declared a total loss by the insurance company responsible for the motor vehicle, the clerk of superior court, upon application of the county board of education, shall enter an order that the motor vehicle be released to the insurance company upon payment into the court of all insurance proceeds for damage to the motor vehicle after payment of towing and storage costs and all valid liens. The clerk of superior court shall provide the Division with a certified copy of the order entered pursuant to this subsection, and the Division shall transfer title to the insurance company or to such other person or entity as may be designated by the insurance company. Insurance proceeds paid to

the clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to G.S. 20-28.5 and shall be disbursed pursuant to further orders of the court. An affected motor vehicle owner or lienholder who objects to any agreed upon settlement under this subsection may file an independent claim with the insurance company for any additional monies believed owed. Notwithstanding any other provisions in the Chapter, nothing in this section or G.S. 20-28.2 shall require an insurance company to make payments in excess of those required pursuant to its policy of insurance on the seized motor vehicle.

(i) Expedited Sale of Seized Motor Vehicles in Certain Cases. -- In order to avoid additional liability for towing and storage costs pending resolution of the criminal proceedings of the defendant, the county board of education may, after expiration of 90 days from the date of seizure, sell any motor vehicle having a fair market value of one thousand five hundred dollars ($1,500) or less. The county board of education may also sell a motor vehicle, regardless of the fair market value, any time the towing and storage costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with the consent of all the motor vehicle owners. Any sale conducted pursuant to this subsection shall take place upon not less than 10 days' prior notice to the motor vehicle owners and lienholders, and the proceeds of the sale, after the payment of outstanding towing and storage costs, shall be deposited with the clerk of superior court. If an order of forfeiture is entered by the court, the court shall order the proceeds held by the clerk to be disbursed as provided in G.S. 20-28.5(b). If the court determines that the motor vehicle is not subject to forfeiture, the court shall order the proceeds held by the clerk to be disbursed first to pay the sale, towing, and storage costs, second to pay outstanding liens on the motor vehicle, and the balance to be paid to the motor vehicle owners.

(j) Retrieval of Certain Personal Property. -- At reasonable times, the entity charged with storing the motor vehicle may permit owners of personal property not affixed to the motor vehicle to retrieve those items from the motor vehicle, provided satisfactory proof of ownership of the motor vehicle or the items of personal property is presented to the storing entity.

(k) County Board of Education Right to Appear and Participate in Proceedings. -- The attorney for the county board of education shall be given notice of all proceedings regarding offenses involving impaired driving related to a motor vehicle subject to forfeiture. The attorney for the county board of education shall also have the right to appear and to be heard on all issues relating to the seizure, possession, release, forfeiture, sale, and other matters related to the seized vehicle under this section. With the prior consent of the county board of education, the district attorney may delegate to the attorney for the county board of education any or all of the duties of the district attorney under this section. Clerks of superior court, law enforcement agencies, and all other agencies with information relevant to the seizure, impoundment, release or forfeiture of motor vehicles are authorized and directed to provide county boards of education with access to that information and to do so by electronic means when existing technology makes this type of transmission possible.

(l) Payment of Fees Upon Conviction. -- If the driver of a motor vehicle seized pursuant to this section is convicted of an offense involving impaired driving, the defendant shall be ordered to pay as restitution to the county board of education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the extent the costs were not covered by the proceeds from the forfeiture and sale of the motor vehicle. In addition, a civil judgment for the costs under this section in favor of the party to whom the restitution is owed shall be docketed by the clerk of superior court. If the defendant is sentenced to an active term of imprisonment, the civil judgment shall become effective and be docketed when the defendant's conviction becomes final. If the defendant is placed on probation, the civil judgment in the amount found by a judge during the probation revocation or termination hearing to be due shall become effective and be docketed by the clerk when the defendant's probation is revoked or terminated.

(m) Trial Priority. -- Trials of impaired driving offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

Once scheduled, the case shall not be continued unless all of the following conditions are met:

(1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard.

(2) The judge makes a finding of a 'compelling reason' for the continuance.

(3) The motion and finding are attached to the court case record.

Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders pursuant to G.S. 20-28.2(d).

Should a defendant appeal the conviction to superior court, any party may file a motion for review to consider whether the motor vehicle may be released pursuant to G.S. 20-28.2(e) or (f), or G.S. 20-28.3(e), (e1), or (e3)."

Section 4. G.S. 20-28.4 reads as rewritten:

"**§ 20-28.4. Release of impounded motor vehicles by judge.**

~~(a) Release to Innocent Vehicle Owner. -- A vehicle owner who was not the operator of the vehicle at the time of the offense may petition the court for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).~~

~~(b) Acknowledgment Required. -- The vehicle owner seeking release under this section or pretrial release under G.S. 20-28.3 shall sign an acknowledgment as described in G.S. 20-28.2(a1)(1).~~

~~(c) Release to Lienholder. -- A district court judge may order a forfeited vehicle released to a lienholder if the judge determines, by the greater weight of the evidence, that the lienholder satisfies the criteria as set out in G.S. 20-28.2(f).~~

(d) Release Upon Conclusion of Trial. -- If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

(1) Is subsequently not convicted of ~~either G.S. 20-138.1 or G.S. 20-138.5~~ an offense involving impaired driving due to dismissal or a finding of not guilty; or

(2) The judge at ~~the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(e)(2),~~ a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) fails to find that the drivers license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2; and

(3) The vehicle has not previously been released to a lienholder pursuant to G.S. 20-28.3(e3),

the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be ~~returned~~ released to the motor vehicle ~~owner.~~ owner conditioned upon payment of towing and storage costs. Notwithstanding G.S. 44A-2(d), if the owner of the seized motor vehicle does not obtain release of the vehicle within 30 days from the date of the court's order, the possessor of the seized motor vehicle has a mechanics' lien on the seized motor vehicle for the full amount of the towing and storage charges incurred since the motor vehicle was seized and may dispose of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes.

~~If the court finds that probable cause did not exist to seize the motor vehicle, the court shall order the vehicle released.~~

~~A determination which results in the return or release of the seized vehicle under this section authorizes the driver, vehicle owner, or lienholder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees recovered pursuant to this subsection shall be paid by the county school board from forfeitures paid into the county school fund.~~"

Section 5. G.S. 20-28.5 reads as rewritten:

"**§ 20-28.5. Forfeiture of impounded ~~vehicle.~~ motor vehicle or funds.**

(a) Sale. -- ~~Unless a judge orders the vehicle returned to an innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be a judicial~~ A motor vehicle ordered forfeited and sold shall be sold at a public sale conducted in accordance with the provisions of ~~Parts 1 and 2 of Article 29A of Chapter 1~~ Article 12 of Chapter 160A of the General ~~Statutes~~ Statutes, applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the notice requirements of this subsection, and shall be conducted by the county ~~school board~~ board of education or a person acting on its behalf. ~~In addition to the notice requirements of Part 2 of Article 29A of Chapter 1 of the General Statutes, notice of sale~~ Notice of sale, including the date, time, location, and manner of sale, shall ~~also~~ be given by ~~certified mail, return receipt requested,~~ first-class mail to all motor vehicle owners of the vehicle to be sold at the address shown by the ~~Division's~~ records of the Division and at any other address of the motor vehicle owner as may be found in the criminal file in which the forfeiture was ordered. ~~Notice~~ Written notice of sale shall also be ~~by certified mail, return receipt~~

~~requested,~~ given to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division. Notices required to be given under this subsection shall be mailed at least 14 days prior to the date of sale. A lienholder shall be permitted to purchase the motor vehicle at any such sale by bidding in the amount of its lien, if that should be the highest bid, without being required to tender any additional funds, other than the towing and storage fees. The county board of education, or its agent, shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this ~~section~~ section, G.S. 20-28.2(f)(5), or G.S. 20-28.3(e3)(3), shall first be applied to the cost of sale and then to satisfy towing and storage ~~liens and the cost of sale.~~ costs. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded ~~with the Division~~ prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the motor vehicle was ordered forfeited. If there is more than one school board in the county, then the net proceeds of sale, after reimbursement to the county board of education of reasonable administrative costs incurred in connection with the forfeiture and sale of the motor vehicle, shall be distributed in the same manner as fines and other forfeitures. ~~Vehicles sold~~ The sale of a motor vehicle pursuant to this section shall be deemed to extinguish all existing liens on the motor vehicle and the motor vehicle shall be transferred free and clear of any liens.

(c) Retention of Motor Vehicle. -- ~~The county~~ A board of education may, at its option, retain any forfeited motor vehicle for its ~~use.~~ use upon payment of towing and storage costs. If the motor vehicle is retained, any valid lien of record at the time of the initial seizure of the motor vehicle shall be satisfied by the ~~school board~~ county board of education relieving the motor vehicle owner of all liability for the obligation secured by the motor vehicle. If there is more than one school board in the county, and the motor vehicle is retained by a board of education, then the fair market value of the motor vehicle, less the costs for towing, storage, reasonable administrative costs, and liens paid, shall be used to determine and pay the share due each of the school boards in the same manner as fines and other forfeitures.

~~(d) [Counties with Multiple School Boards.] -- If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share due each of the school boards in the same manner as fines and other forfeitures.~~

(e) Order of Forfeiture; Appeals. -- An order of forfeiture is stayed pending appeal of a conviction for an offense that is the basis for the order. When the conviction of an offense that is the basis for an order of forfeiture is appealed from district court, the issue of forfeiture shall be heard in superior court de novo. Appeal from a final order of forfeiture shall be to the Court of Appeals."

Section 6. G.S. 20-28.6 is repealed.

Section 7. G.S. 20-28.7 reads as rewritten:

"**§ 20-28.7. Responsibility of Division of Motor Vehicles.**

The Division shall establish procedures by rule to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-28.4, ~~20-28.5, and 20-28.6.~~ and 20-28.5."

Section 8. Article 2 of Chapter 20 of the General Statutes is amended by adding two new sections to read:

"**§ 20-28.8. Reports to the Division.**

In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any other information that must be reported pursuant to this Chapter, the clerk of superior court shall report to the Division by electronic means the execution of an acknowledgement as defined in G.S. 20-28.2(a1)(1), the entry of an order of forfeiture as defined in G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and G.S. 20-28.4. Each report shall include any of the following information that has not previously been reported to the Division in the case: the name, address, and drivers license number of the defendant; the name, address, and drivers license number of the nondefendant motor vehicle owner, if known; and the make, model, year, vehicle identification number, state of registration, and vehicle registration plate number of the seized vehicle, if known.

"**§ 20-28.9. Authority for the Department of Public Instruction to administer a statewide or regional towing, storage, and sales program for driving while impaired vehicles forfeited.**

(a) The Department of Public Instruction is authorized to enter into a contract for a statewide service or contracts for regional services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized under G.S. 20-28.3 shall be subject to contracts entered into pursuant to this section. Contracts shall be let by the Department of Public Instruction in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. All contracts shall ensure the safety of the motor vehicles while held and any funds arising from the sale of any seized motor vehicle. The contract shall require the contractor to maintain and make available to the agency a computerized up-to-date inventory of all motor vehicles held under the contract, together with an accounting of all accrued charges, the status of the vehicle, and the county school fund to which the proceeds of sale are to be paid. The contract shall provide that the contractor shall pay the towing and storage charges owed on a seized vehicle to a commercial towing company at the time the seized vehicle is obtained from the commercial towing company, with the contractor being reimbursed this expense when the vehicle is released or sold. The Department shall not enter into any contract under this section under which the State will be obligated to pay a deficiency arising from the sale of any forfeited motor vehicle.

(b) The Department, through its contractor or contractors designated in accordance with subsection (a) of this section, may charge a reasonable fee for storage not to exceed ten dollars ($10.00) per day for the storage of seized vehicles pursuant to G.S. 20-28.3.

(c) In order to help defray the administrative costs associated with the administration of this section, the Department shall collect a ten dollar ($10.00) administrative fee from a person to whom a seized vehicle is released at the time the motor vehicle is released, and shall collect a ten dollar ($10.00) administrative fee out of the proceeds of the sale of any forfeited motor vehicle. The funds collected under this subsection shall be paid to the General Fund."

Section 9. G.S. 20-54 reads as rewritten:

"**§ 20-54. Authority for refusing registration or certificate of title.**

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.

(2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

(3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.

(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State.

(5) The required fee has not been paid.

(6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid.

(7) The Division has been notified that the motor vehicle has been seized by a law enforcement officer and is subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute. However, the Division shall not prevent the renewal of existing registration prior to an order of forfeiture."

Section 10. Part 2 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-54.1. Forfeiture of right of registration.**

(a) Upon receipt of notice of conviction of a violation of an offense involving impaired driving while the person's license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the registration of all motor vehicles registered in the convicted person's name and shall not register a motor vehicle in the convicted person's name until the convicted person's license is restored. Upon receipt of notice of revocation of registration from the Division, the convicted person shall surrender the registration on all motor

vehicles registered in the convicted person's name to the Division within 10 days of the date of the notice.

(b) Upon receipt of a notice of conviction under subsection (a) of this section, the Division shall revoke the registration of the motor vehicle seized, and the owner shall not be allowed to register the motor vehicle seized until the convicted operator's drivers license has been restored. The Division shall not revoke the registration of the owner of the seized motor vehicle if the owner is determined to be an innocent owner. The Division shall revoke the owner's registration only after the owner is given an opportunity for a hearing to demonstrate that the owner is an innocent owner as defined in G.S. 20-28.2. Upon receipt of notice of revocation of registration from the Division, the owner shall surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the notice."

Section 11. G.S. 20-55 reads as rewritten:

"**§ 20-55. Examination of registration records and index of ~~stolen~~ seized, stolen, and recovered vehicles.**

The Division, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the engine and serial numbers shown in the application with its record of registered motor vehicles, and against the index of ~~stolen~~ seized, stolen, and recovered motor vehicles required to be maintained by this Article."

Section 12. G.S. 20-114(c) reads as rewritten:

"(c) It shall also be the duty of every ~~sheriff of every county of the State and of every police or peace officer of the State~~ law enforcement officer to make immediate report to the Commissioner of all motor vehicles reported to ~~him~~ the officer as abandoned or that are seized by ~~him~~ the officer for being used for illegal transportation of alcoholic beverages or other unlawful purposes, or seized and are subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until notice on a form approved by the Commissioner shall have been given the Commissioner at least 20 days before the date of such sale."

Section 12.1. G. S. 20-166.1(h) reads as rewritten:

"(h) Forms. -- The Division must provide forms to persons required to make reports under this section and the reports must be made on the forms provided. The forms must ask for the following information about a reportable accident:

(1) The cause of the accident.
(2) The conditions existing at the time of the accident.
(3) The persons and vehicles involved.
(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 13. G.S. 1-339.4 reads as rewritten:

"**§ 1-339.4. Who may hold sale.**

An order of sale may authorize the persons designated below to hold the sale:

(1) In any proceeding, a commissioner specially appointed therefor; ~~or~~

(2) In a proceeding to sell property of a decedent, the administrator, executor or collector of such decedent's estate;
(3) In a proceeding to sell property of a minor, the guardian of such minor's estate;
(4) In a proceeding to sell property of an incompetent, the guardian or trustee of such incompetent's estate;
(5) In a proceeding to sell property of an absent or missing person, the administrator, collector, conservator, or guardian of the estate of such absent or missing person;
(6) In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust;
(7) In a receivership proceeding, the receiver;
(8) In a proceeding to sell property of a trust, the ~~trustee;~~ trustee.
~~(9) In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the county school board or a person acting on its behalf.~~"

Section 14. G.S. 44A-2(d) reads as rewritten:

"(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of ~~his~~ the person's business pursuant to an express or implied contract with an owner or legal possessor of the motor ~~vehicle~~ vehicle, except for a motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests. Payment for towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2 through G.S. 20-28.5."

Section 15. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --
(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, ~~within 15 days of receipt of notice from the lienor,~~ to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien.

The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is ~~desired and the Division shall notify lienor.~~ desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, ~~the Division shall notify the lienor,~~ and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the ~~Division notifies the lienor that the~~ registered or certified mail notice has been returned as undeliverable, or if ~~the Division cannot ascertain~~ the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only

to valid claims against that vehicle, and any excess proceeds of the sale shall escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom ~~the Division has mailed~~ notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

Section 16. G.S. 58-71-1 reads as rewritten:

"**§ 58-71-1. Definitions.**

The following words when used in this Article shall have the following meanings:

(1) 'Accommodation bondsman' is a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. 'Consideration' as used in this subdivision does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of said bail bond.

(2) 'Bail bond' shall mean an undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State in a stated amount; and may include an unsecured appearance bond, a

premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one surety. A bail bond may also include a bond securing the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(3) 'Bail bondsman' shall mean a surety bondsman, professional bondsman or an accommodation bondsman as hereinafter defined.

(4) 'Commissioner' shall mean the Commissioner of Insurance.

(5) 'Insurer' shall mean any domestic, foreign, or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this State.

(6) 'Obligor' shall mean a principal or a surety on a bail bond.

(7) 'Principal' shall mean a defendant or witness obligated to appear in court as required upon penalty of forfeiting bail under a bail ~~bond.~~ bond or a person obligated to return a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(8) 'Professional bondsman' shall mean any person who is approved and licensed by the Commissioner and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(9) 'Runner' shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or to assist in apprehension and surrender of defendant to the court, or keeping defendant under necessary surveillance, or to execute bonds on behalf of the licensed bondsman when the power of attorney has been duly recorded. 'Runner' does not include, however, a duly licensed attorney-at-law or a law-enforcement officer assisting a bondsman.

(10) 'Surety' shall mean one who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

(11) 'Surety bondsman' means any person who is licensed by the Commissioner as a surety bondsman under this Article, is appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings, and receives or is promised consideration for doing so."

Section 17. G.S. 58-71-35(a) reads as rewritten:

"(a) ~~The~~ Except for bonds issued to secure the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e), the procedure for forfeiture of bail shall be that provided in Article 26 of Chapter 15A of the General Statutes and all provisions of that Article shall continue in full force and effect."

PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

Section 18. G.S. 20-17(a) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

(1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.

(2) Either of the following impaired driving offenses:

a. Impaired driving under G.S. 20-138.1.

b. Impaired driving under G.S. ~~20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of 0.08 or more.~~ 20-138.2.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

(5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.

(6) Conviction upon two charges of reckless driving committed within a period of 12 months.

(7) Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

(9) Death by vehicle as defined in G.S. 20-141.4.

(10) Repealed by Session Laws 1997-443, s. 19.26(b).

(11) Conviction of assault with a motor vehicle.

(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7."

(13) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(14) A conviction of driving a school bus, school activity bus, or child care vehicle after consuming alcohol under G.S. 20-138.2B."

Section 19. G.S. 20-17.4 reads as rewritten:

"**§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

(a) One Year. -- Any of the following disqualifies a person from driving a commercial motor vehicle for one year:

(1) A first conviction of G.S. 20-138.1, driving while impaired, that occurred while the person was driving a motor vehicle not a commercial motor vehicle.
(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.
(3) A first conviction of G.S. 20-166, hit and run, involving a commercial motor vehicle driven by the person.
(4) A first conviction of a felony in the commission of which a commercial motor vehicle was used.
(5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.
(6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(a1) Ten-Day Disqualification. -- A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. -- A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. -- A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. -- A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) Less Than a Year. -- A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(e) Three Years. -- A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while

the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) Revocation Period. -- A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is revoked."

Section 20. G.S. 20-17.6(a) reads as rewritten:

"(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

(1) G.S. 20-138.1, driving while impaired (DWI).

(2) G.S. 20-138.2, commercial ~~DWI, if the person's license was revoked under G.S. 20-17(2)~~ DWI.

(3) G.S. 20-138.3, driving while less than 21 years old after consuming alcohol or drugs.

(4) G.S. 20-138.2A, driving a commercial motor vehicle with an alcohol concentration of greater than 0.00 and less than 0.04, if the person's drivers license was revoked under G.S. 20-17(a)(13).

(5) G.S. 20-138.2B, driving a school bus, a school activity bus, or a child care vehicle with an alcohol concentration of greater than 0.00, if the person's drivers license was revoked under G.S. 20-17(a)(14)."

Section 21. G.S. 20-19 is amended by adding a new subsection to read:

"(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year."

Section 22. G.S. 20-36 reads as rewritten:

"**§ 20-36. Ten-year-old convictions not considered.**

~~No~~ Except for a second or subsequent conviction for violating G.S. 20-138.2, a third or subsequent violation of G.S. 20-138.2A, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of ~~such~~ that conviction."

Section 23. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) is an infraction, punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6)."

Section 24. G.S. 20-138.2(e) reads as rewritten:

"(e) ~~Punishment; Effect When Impaired Driving Offense Also Charged. --~~ Punishment. -- The offense in this section is a ~~Class 1~~ misdemeanor and any defendant convicted under this section shall be sentenced under G.S. 20-179. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, ~~but~~ and if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1."

Section 25. G.S. 20-179(a) reads as rewritten:

"(a) Sentencing Hearing Required. -- After a conviction for impaired driving under ~~G.S. 20-138.1,~~ G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration."

PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES.

Section 26. G.S. 20-4.01(27) reads as rewritten:

"(27) Passenger Vehicles. --

a. Excursion passenger vehicles. -- Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. -- Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. -- Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.

c1. Child care vehicles. -- Vehicles under the direction and control of a child care facility, as defined in G.S. 110-86(3), and driven by an owner, employee, or agent of the child care facility for the primary purpose of transporting children to and from the child care facility, or to and from a place for participation in an event or activity in connection with the child care facility.

d. Motorcycles. -- Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. -- A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

d2. Motor home or house car. -- A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a

portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. -- A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. -- A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. -- Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. -- Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. -- All other passenger vehicles not included in the above definitions."

Section 27. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) is an infraction, punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a

misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2)."

PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS OF AGE.

Section 28. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; ~~or~~

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration."

Section 29. G.S. 20-16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~ Who Are Charged With Certain Implied-Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);
(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and
(4) The person:
a. Willfully refuses to submit to the chemical analysis;
b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving; ~~or~~
c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial ~~vehicle.~~ vehicle; or
d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 30. G.S. 20-16.5(b1) reads as rewritten:

"(b1) Precharge Test Results as Basis for Revocation. -- Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:
(1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and
(2) ~~He~~ The person has:
a. An alcohol concentration of 0.08 or more at any relevant time after driving; ~~or~~
b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; ~~and~~ or
c. Any alcohol concentration at any relevant time after driving and the person is under 21 years of age; and
(3) ~~He~~ The person is charged with an implied-consent offense."

PART V. INCREASE FINES FOR DWI OFFENSES.

Section 31. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to ~~two thousand dollars ($2,000)~~ four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 32. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not

less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 33. G.S. 20-179(i) reads as rewritten:

"(i) Level Three Punishment. -- A defendant subject to Level Three punishment may be fined up to ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
(2) Perform community service for a term of at least 72 hours; or
(3) Not operate a motor vehicle for a term of at least 90 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 34. G.S. 20-179(j) reads as rewritten:

"(j) Level Four Punishment. -- A defendant subject to Level Four punishment may be fined up to ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or
(2) Perform community service for a term of 48 hours; or
(3) Not operate a motor vehicle for a term of 60 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 35. G.S. 20-179(k) reads as rewritten:

"(k) Level Five Punishment. -- A defendant subject to Level Five punishment may be fined up to ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of

imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

(3) Not operate a motor vehicle for a term of 30 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

PART VI. MISCELLANEOUS PROVISIONS.

Section 36. From funds appropriated to the Department of Public Instruction, the Department shall be authorized to hire a person to handle the administration of a statewide contract, or regional contracts for services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.9.

Section 37. The Joint Legislative Education Oversight Committee shall study the effect of the DWI forfeiture provisions as set forth in G.S. 20-28.2 through G.S. 20-28.9 and the financial impact on county boards of education. The study shall include, among other relevant information, a statistical analysis of the number of vehicles seized, the length of time vehicles are held until disposition by the court, the percentage of seized vehicles forfeited, the sale price of seized vehicles sold, the average towing and storage costs, and county school administrative costs associated with the seizure and forfeiture of the vehicles. The Committee shall recommend ways to make the procedure and process for managing seized and forfeited vehicles more efficient and effective. The Committee may report to the 1999 General Assembly.

PART VII. EFFECTIVE DATE.

Section 38. Parts I and VI of this act become effective October 1, 1998, and apply to offenses committed, contracts entered, and motor vehicles seized on or after that date. Parts II, III, IV, and V of this act become effective December 1, 1998, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. The provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set forth in Section 3 of this act shall also apply to vehicles held on or after the effective date as a result of seizure that occurred before, on, or after that date. Where the expedited sales provisions of G.S. 20-28.3(i) are applied to motor vehicles seized on or after December 1, 1997, and before December 1, 1998, the county board of education shall refund any towing or storage costs received as a result of the expedited sale, if the court finds that the motor vehicle owner is not obligated to pay towing and storage costs.

FISCAL ANALYSIS MEMORANDUM

DATE: August 18, 1998

TO: House Finance Committee

FROM: Elisa Wolper
Fiscal Research Division

RE: Senate Bill 1336 Governor's DWI Amendments as amended by House Judiciary

The Fiscal Note on SB 1335 (H 1496 (PCS CSSA-004) completed on August 4, 1998 projected a fiscal impact as detailed on pages 2-3. The Judiciary Committee action on August 11th modified the PCS to double the maximum allowable fines for each of the Levels of DWI offense. These fines are collected by the Clerk of Courts and remitted to County School Boards. In 1996-97, $55.6 Million in Fines and Forfeitures were collected and distributed to the counties. There is no data available to estimate the portion of these collections which were due to DWI convictions. Also, since the Judiciary Committee action doubled the maximum fine and it is not known how frequently judges choose the maximum now, it is impossible to predict the fiscal impact of this increase. There will be a positive revenue impact on county school systems but the dollar amount can not be calculated.

The summary below details two changes in fees included in the bill. Section 15 (44A-4(b)(1)) amends the mechanics lien statute to allow a lienor to directly send notices of intent to sell, rather than relying on DMV to send the notice. Since DMV currently charges a $10 fee to lienors (to cover the cost of 3 certified letters, on average) there will be a decrease in the fees collected. FRD estimates that 25% of lienors will choose to send notice directly, decreasing fees by $24,250. The decrease in expenses to DMV will be less ($17,824) so the net impact is an increase in cost to the Highway Fund.

In Section 8, the Department of Public Instruction is authorized to assess a $10/vehicle administrative fee to defray the costs of administering regional or statewide contracts for the towing, storage and sale of seized and forfeited vehicles. Estimating 6,000 seized vehicles per year, the fee will generate $60,000 annualized. They are also authorized to hire a fulltime person to administer this contract at an annualized cost of $39,883.

Both local school boards and DPI are also authorized, through their contractors, to assess a fee for storage of up to $10 per day. To the extent that costs exceed or fall short of this fee, the fiscal impact will be on the contractors. Local school boards may store the vehicles themselves and charge up to $10/day. To the extent their costs are greater or less than $10, there will be a fiscal impact on local government. No data is available to estimate that impact on a county by county basis.

FISCAL IMPACT

Yes (X) No ( ) No Estimate Available ( )

There are several areas where this bill has a fiscal impact but dollar estimates are not available for all aspects. The dollar total below therefore understates the total dollar cost, particularly for AOC, due to the lack of data to project accurate costs in some areas.

(Note: R=recurring; NR=nonrecurring)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
GENERAL FUND REVENUES					
DPI - R	$45,000	$60,000	$60,000	$60,000	$60,000
EXPENDITURES					
DPI - R	$28,900	$39,883	$41,239	$42,558	$43,963
DPI - NR	$4,138				
Judicial - R	$40,408	$71,305	$73,730	$76,089	$78,600
Judicial - NR	$1,020				
Indigent Defense	$17,710	$36,360	$36,360	$36,360	$36,360
Total	$92,176	$141,548	$145,329	$149,907	$152,923
NET IMPACT (expenditures minus revenue)	$47,176	$81,548	$85,329	$89,007	$92,923
POSITIONS	2	2	2	2	2
HIGHWAY FUND REVENUE					
DMV - R	($18,390)	($24,520)	($24,520)	($24,520)	($24,520)
EXPENDITURES					
DMV - R	$6,107	$9,042	$9,946	$10,828	$11,766
DMV - NR	$58,574				
Designated Agency R-Note 1	$23,075	$31,796	$32,833	$33,851	$34,929
Designated Agency-NR	$24,924	$68,400			
Total	$112,050	$109,238	$42,779	$44,679	$46,695
NET IMPACT (expenditures minus revenue)	$130,440	$133,758	$67,299	$69,199	$71,215
POSITIONS	2	2	2	2	2

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Judicial System, Division of Motor Vehicles, State Highway Patrol, Department of Public Instruction, Local Law Enforcement Agencies, and Local School Boards

EFFECTIVE DATE: The provisions in Part I of the bill changing the DWI forfeiture law would become effective October 1, 1998 and would apply to offenses committed on or after that date. The new provisions allowing for increased options to release a seized vehicle through bonding, an innocent owner petition, a defendant owner petition, a lienholder petition, insurance proceeds and expedited pre-trial sales would apply to vehicles currently held on the effective date. Parts II, III, & IV for zero tolerance violations and immediate revocation for under 21 zero tolerance violations are effective December 1, 1998.

Note 1: The bill requires the Governor to designate an executive agency to send seizure notifications. The estimate is the higher of the two estimates for the Division of Motor Vehicles and the State Highway Patrol as that designated agency. The estimates for each are in the body of the note.

BILL SUMMARY: (taken from memo prepared by Senate Judiciary Committee Counsel, Research Div.)

PART I - DWI FORFEITURE AMENDMENTS

Bill Summary

Part I of the bill (Sections 1 through 17) amends the DWI forfeiture law in seven major ways:

1. Expands coverage of the law.
2. Provides greater protections for innocent owners.
3. Provides more bonding options to obtain pre-trial temporary release of the vehicle to nondefendant owners.
4. Provides greater protections for lienholders.
5. Provides greater protections for school boards.
6. Clarifies the authority of law enforcement officers and magistrates in seizure situations.
7. Expedites the sale of some seized vehicles providing greater protections to all parties to avoid excessive storage costs.

Section 1 expands the definition of offenses involving impaired driving to include first degree murder when based on impaired driving and habitual impaired driving.

Section 2 (20-28.2) expands the definition of "impaired driving revocation" to include revocations for habitual impaired driving, commercial driving while impaired, and all vehicular homicides involving impaired driving.

- Subsection (a1) includes in the definition of an "innocent owner" persons whose vehicle was reported stolen, persons who filed a police report for unauthorized use of the vehicle, and persons who rent cars that are driven by a person not authorized on the contract as a driver.
- Subsection (b) permits a forfeiture hearing to be held either at sentencing, at a subsequent hearing, or at an expedited hearing held 60 days after the defendant fails to appear on the DWI charge and the order of arrest for failing to appear has not been set aside.
- Subsection (c1) provides that insurance proceeds due from a vehicle damaged in conjunction with the offense leading to the seizure are considered part of the value of the vehicle seized and the proceeds are made subject to forfeiture as well.
- Subsection (d) is amended to allow the court to order collected insurance proceeds to be paid to the county board of education and the rights to claim unpaid insurance proceeds assigned to the county board of education.
- Subsection (e) provides for the vehicle to be returned to an innocent owner, including a lessor, upon payment of towing and storage charges.
- Subsection (f) provides for the vehicle to be released to a lienholder if the vehicle owner is in default on the loan secured by the vehicle, to be sold in accordance with the repossession law, with any equity arising from the sale to be paid to the county board of education.

Section 3 (20-28.3)

- Subsections (b) does not require the officer to seize a vehicle reported stolen or a rental vehicle driven by a person not authorized on the rental agreement, and together with (b1) removes from the arresting officer the duty to notify the relevant parties of the seizure of the vehicle and transfers that responsibility to an executive agency designated by the Governor. Subsection (b) requires the officer to make reasonable efforts to notify the owner of a rental vehicle that the vehicle was stopped and the driver was not an authorized driver.
- Subsection (c1) makes an order of seizure valid statewide and clarifies law enforcement's authority to effect the order of seizure.
- Subsection (d) allows custody of seized vehicles to be held either through a state or regional central storage arrangement, or if none is available, by the local county board of education. Storage fees are raised from $5 per day to $10 per day, and school boards are allowed to charge for storage if cars are held on school property. Private commercial towing companies are entitled to payment for towing and storage charges prior to releasing the vehicle, unless other arrangements are agreed to by the towing company.

- Subsection (e) expands the options for obtaining temporary release of a seized vehicle by a nondefendant owner pending trial by allowing property and bail bonds as collateral for the return of the vehicle at the forfeiture hearing.
- Subsection (e1) allows a pretrial determination of innocent owner status by petition. Upon the filing of the petition a court hearing will be set within 10 days, during which time the district attorney may authorize the release of the vehicle if the district attorney determines that the vehicle will not be subject to forfeiture.
- Subsection (e2) establishes a way for a defendant owner to have a pretrial hearing on the question of whether the vehicle is subject to forfeiture where the defendant contends that the defendant's license was not revoked for an impaired driving offense and the seizure was a mistake.
- Subsection (e3) allows the lienholder to petition for pretrial release where the owner is in default on the loan. The lienholder is allowed to sell the vehicle in accordance with the repossession law and any equity arising from the sale is to be paid to the county board of education.
- Subsection (h) provides for insurance proceeds to be seized pending forfeiture, allowing the school board attorney to negotiate the claim and allowing a vehicle determined to be a total loss to be released upon payment of the proceeds.
- Subsection (i) provides for several circumstances where a seized vehicle may be sold prior to forfeiture in order to mitigate excessive storage charges. Those situations include 1) where the owner consents to the sale, 2) after 90 days if the vehicle is worth $1,500 or less, and 3) anytime the towing and storage charges equal or exceed 85% of the worth of the vehicle.
- Subsection (k) authorizes the school board attorney to take a more active and significant role in the forfeiture process.
- Subsection (l) provides that the defendant be taxed with the cost of towing and storage as part of the restitution for the criminal offense. The clerk must docket the cost as a civil judgment if the defendant is sentenced to an active term or imprisonment or has their probation revoked or terminated.
- Subsection (m) makes trials of DWI cases involving seized vehicles a higher priority and restricts grounds on which these cases can be continued to later dates.

Section 4 (20-28.4) makes conforming changes for other changes made in the bill.

Section 5 (20-28.5).

- Subsection (a) changes the sales process for forfeited vehicles from a judicial sale to a public sale with special notices as permitted for the disposal of surplus property by schools.
- Subsection (c) clarifies how much a school board should pay other school boards in the county if the school board retains the forfeited vehicle.

Section 6 repeals restrictions on registration of vehicles for persons whose vehicles are forfeited. These provisions have been recodified in other sections of the law in Sections 9 and 10 of the bill.

Section 8 (20-28.8 and 20-28.9) clarify what information the clerk of court is required to report to DMV and authorizes the Department of Public Instruction to administer regional or statewide contracts for the towing, storage, and sale of seized and forfeited vehicles. It also clarifies that storage fees up to $10 per day may be charged for storage under a statewide or regional contract and that a $10 per vehicle administrative fee will be collected to defray the Department of Public Instruction's costs for administering this program.

Sections 9 and 10 (20-54 and 20-54.1) recodify restrictions on registration of vehicles for persons whose vehicles are forfeited.

Section 12.1 requires DMV to modify the accident report form to provide for the investigative officer to indicate on the accident report if the vehicle involved in the accident was seized and subject to forfeiture.

Section 14 (44A-2(d)) amends the mechanics lien statute to exempt seized vehicle towed or stored from the mechanics lien statute and provides for payment of towing and storage through the seizure and forfeiture process where these costs are required to be paid when the vehicle is release or paid from the proceeds of sale.

Section 15 (44A-4(b)(1) amends the mechanics lien statute to permit the lienholder to send the notice directly to a vehicle owner whose vehicle is subject to sale to satisfy an unpaid mechanics lien. Under existing law, DMV sends the notices.

Sections 16 and 17 (58-71-1 and 58-71-35) amend the bail bond statutes to allow bail bonds to be used to bond the release of seized vehicles.

ASSUMPTIONS AND METHODOLOGY:
NUMBER OF VEHICLES INVOLVED: Based on Department of Public Instruction records showing an average of 467 seized vehicles per month in 1997-8, this fiscal analysis assumes 6,000 vehicles will be seized each year.

JUDICIAL SYSTEM: The workload for the clerks of court is expected to increase due to (1) broadening the offenses for which vehicles are subject to seizure (Sec. 3); (2) clarification of the process for pre-trial release to innocent parties (Sec. 3); (3) the addition of a mechanism for restitution payments to school boards (Sec. 3); (4) broadening of the definition of innocent parties (Sec. 2); (5) the increase in options for release of impounded vehicles (Sec. 4); and (5) the disbursement of insurance proceeds (Sec. 2). There will also be costs, including programming changes, involved in reporting information to Division of Motor Vehicles. There is no estimate available of the exact fiscal impact, in part because it is difficult to predict whether the seizures will be spread evenly among the counties and across the year (which would minimize the impact on any individual Clerk) or concentrated in certain months and areas.

AGENCY TO BE DESIGNATED BY GOVERNOR:

Under existing law, an officer who seizes a vehicle pursuant to the DWI Forfeiture Laws must send written notification to any vehicle owner who was not operating or present in the vehicle at the time of the seizure and notify the Division of Motor Vehicles of the seizure. Sections 3(b) and (b1) of this bill would eliminate the officer's duty to notify the vehicle owner except where the vehicle stopped was a rental vehicle driven by an unauthorized user., But, the bill would require the officer to notify the executive agency designated by the Governor , as soon as practical but within 72 hours, that a motor vehicle has been seized. That agency must issue written notification of the seizure to any lienholder of record and to the motor vehicle owner who was not operating the vehicle or was not present at the time of the offense within 48 hours of receipt of notification from the charging officer. If the vehicle was damaged during the commission of the underlying offense or incident to seizure, that agency must also notify the insurance company of record.

The Governor has not yet designated the agency but the most likely choices are the Division of Motor Vehicles (Division) or the State Highway Patrol (Patrol). The work involved in this task should be very similar in either agency and will require one time modifications to either computer system and new ongoing clerical personnel (1). There are some important differences in the approach of each agency that could affect the costs. The primary difference in this analysis between the costs for each agency is some greater one time Management Information System costs for DMV.

DIVISION OF MOTOR VEHICLES: Even if DMV is not the designated agency, they face some costs from the requirement to identify and notify insurers of cars that are damaged. This would require an additional processing assistant and related costs.

This bill also amends the statute regarding mechanics liens to allow lienors to send notices directly. This affects DMV receipts (there is a $10 fee charged when they do notice) and mailing costs (fewer notices mailed). The fiscal impact assumes 25% of lienors will choose to send notices directly. Based on 9,700 annual notices before the change, revenues will fall by $24,250 (=$10*25%*9,700) . Mailing costs will fall by $17,824 ($2.45/letter*3 letters/case*25%*9,700). The net impact on DMV is an increase in costs to the Highway Fund of $6,426.

DEPARTMENT OF PUBLIC INSTRUCTION/LOCAL SCHOOL BOARDS

Section 8 authorizes the Department of Public Instruction to administer a regional or statewide contract for the towing, storage and sale of seized and forfeited vehicles. It provides for the assessment of a $10 per day storage fee and a $10 per vehicle administrative fee.

The Fiscal Research Division estimates that the Department of Public Instruction would need one additional Administrative Officer III to administer the contract. The personnel cost for the position effective October 1, 1998 is estimated to be $28,900 with an annualized cost of $38,534. The estimate for furniture and equipment is $4,138. Based on the estimated number of vehicles seized annually, the Fiscal Research Division also estimates that fees collected under this section would generate $60,000 (6,000 seized vehicles * $10.00 administrative fee/vehicle) in General Fund revenue on an annual basis to defray the cost of administering the contract.

Subsection 3(d) of the bill authorizes the county boards of education, in the absence of a statewide or regional contract, to contract with a commercial towing and storage facility or other private entity and to charge up to $10 per day for storage. This subsection also authorizes county boards of education, in the absence of a statewide or regional contract to store vehicles on their property and to charge a reasonable fee up to $10.00 per day. These provisions may have a fiscal impact on the county boards of education if for example the actual cost differs from the per day charge. However, the dollar value of the impact cannot be determined on a county by county basis.

Other sections in this part of the bill provide greater protections for school boards by authorizing them to negotiate with insurance companies, directing clerks of court to pay insurance proceeds to them if the court orders seizure; authorizing expedited sale of vehicles, giving them the right to appear at forfeiture hearings and requiring defendants to pay restitution to them. No data is available to estimate the impact which these sections of the bill would have on school boards.

LOCAL LAW ENFORCEMENT

Subsection 3(b) together with subsection 3(b1) transfers the responsibility for notifying the owner of a seized vehicle of the seizure from the charging officer to the executive agency designated by the Governor. However, if the motor vehicle was a rental vehicle driven by an unauthorized driver, subsection 3(b) requires the charging officer to make reasonable efforts to notify the owner of the rental vehicle that the vehicle was stopped and that the driver was not an authorized driver.

This change would not increase or decrease the number of stops for violations. However, the change would reduce the time required for each incident. No data is available is estimate the dollar value of the impact.

PART II - ZERO TOLERANCE FOR COMMERCIAL DRIVERS and PART III- ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES

Bill Summary:

Sections 18 through 24 amend the laws for commercial driving while impaired offense by reducing the permissible alcohol level from less than 0.04 to no alcohol at all. These sections also revoke a commercial drivers license for modified life (possibility of reinstatement after 10 years) for a second DWI conviction or for life without the possibility for reinstatement for a third or subsequent conviction of a commercial DWI offense.

Sections 25 through 29 make it illegal to drive a school bus or a child care vehicle with any alcohol in the body. Currently, operators of larger vehicles are required to have commercial drivers licenses and are subject to a 0.04 blood alcohol limit. This change would make zero tolerance applicable not to just commercial drivers but also operators of small vehicles for which a commercial drivers license is not required

Assumptions & Methodology - Judicial System

Sections 18-24 stiffen the penalty for DWI for Commercial Drivers in two ways. The bill reduces the permissible blood alcohol level for commercial driving from less than .04 to no alcohol at all. The bill also institutes a 1 year disqualification if a commercial driver has a DWI while driving a noncommercial vehicle.

The reduction in the permissible blood alcohol level for commercial driving will likely result in new cases and more strenuous defense of these cases. The Judicial System estimates a 17% increase in the number of cases (from 96 to 112), a 10 hour increase (from 5 to 15 hours) in court time per case for judges, deputy clerks and assistant district attorneys, and a 5 hour increase (from 5 to 10 hours) in preparation time per case for assistant district attorneys. The workload for clerks and judges would each increase by 1,200 hours in court time ((96 cases currently * 10 hour increase/case) + 16 new cases * 15 hours/case)). The workload for district attorneys would increase by 1,840 hours per year ((96 cases currently * 5 hour increase in preparation time/case) + (16 new cases * 10 hours of preparation time/case) + 1200 hours of court time for 112 cases). The increase in workloads for judges and deputy clerks equates to .66 of a full-time position for each. The increased workload for the assistant district attorneys would require one additional position.

The Judicial System also estimates that defense attorney costs would increase. This estimate assumes a 33% indigency rate and that the increased workload for defense attorneys would be the same as the increased workload for assistant district attorneys. The estimated cost for defense attorneys is $30,360 (33% * 1,840 additional hours * $50/hour).

Also, the section of the bill which provides for a one-year disqualification from driving a commercial motor vehicle for a conviction of a regular DWI while driving a noncommercial vehicle is likely to have a substantial impact on the courts. However, because the Judicial System does not have any data indicating how many of the people convicted of regular DWI also drive commercial vehicles, the potential impact on the courts cannot be determined.

Sections 25-29 reduce permissible blood alcohol level necessary for a DWI charge for drivers of school buses and child care vehicles from .04 to zero. While it is expected this will result in some new charges, there is no data available to project the increase and the Judicial System assumes negligible impact.

Assumptions & Methodology - Division of Motor Vehicles

Both Parts II and III would change the rules governing driving privileges. Therefore, program modifications to the Division's computerized system are required to implement the bill. The Division estimates that required modifications to the State Automated Driver License System would require about 590 hours of programming and testing. Based on $80/hour for contractual services for programming this would cost $47,200 non-recurring. There would be an additional $7,080 in SIPS charges related to implementation and testing of the revised system.

Assumptions & Methodology - Local Law Enforcement Agencies/State Highway Patrol

Local law enforcement estimates that these change would not result in any additional stops for violations but may increase the offense for which the vehicle operator is charged and may, consequently, increase the time required for each incident. No data is available to estimate the dollar value of the impact and law enforcement assumes any impact would be negligible.

PART IV - IMMEDIATE REVOCATION FOR UNDER 21 DRIVERS

Bill Summary

Sections 30 through 32 makes the immediate 30-day civil revocation of a drivers license for DWI offenses also applicable for violations of zero tolerance for drivers under age 21.

Assumptions & Methodology - Judicial System

These sections provide for an automatic 30-day drivers license revocation for any driver under 21 years of age who is charged with an implied consent offense if results of a chemical analysis reveal the presence of any alcohol concentration at any relevant time after driving. During calendar 1997, there were 6,507 defendants charged with driving while consuming alcohol or within a relevant time after consumption. While this provision would apply to a substantial number of youthful drivers the short duration of the revocation may limit the frequency of hearings to contest these revocations or to request limited driving privileges. The Judicial System expects this provision to have an impact on the courts' workload. However, data is not available to estimate the impact in terms of hours of work or dollars.

Assumptions & Methodology - Division of Motor Vehicles:

This part of the bill provides for the 30-day revocation of drivers license of drivers under 21 years of age who are charged with an implied consent offense or who have any level of alcohol concentration within a relevant time after driving. As with Parts II and III, modifications to the Division's system are required to implement this part of the bill. The estimate for the cost of the modifications is discussed in Part II, page 15.

Assumptions & Methodology - Local Law Enforcement/State Highway Patrol

This part of the bill provides for the 30-day revocation of drivers license of drivers under 21 years of age who are charged with an implied consent offense or who have any level of alcohol concentration within a relevant time after driving. Local law enforcement estimates that this change would not result in any additional stops for violations. However, the change may increase the time required for each incident. No data is available to estimate the dollar value of the impact and law enforcement assumes negligible impact.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1336

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1336-ASE-020 Page 1 of __

Date_____,1998

Comm. Sub. [YES]
Amends Title []
Fifth Edition

Representative Hackney

moves to amend the bill on page 28, line 5,
by rewriting the line to read:
"the offense described in subsection (a) is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one"; and

on page 30, line 42,
by rewriting the line to read:
"the offense described in subsection (a) is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1336

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1336-ASE-030.1 Page 1 of __

Date_____,1998

Comm. Sub. [YES]
Amends Title []
Fifth Edition

Representative Hensley

moves to amend the bill on page 34, lines 26 and 27, by inserting between the lines a new section to read:

"Section 37.1. G.S. 115C-276 is amended by adding a new subsection to read:

"(s) Report on DWI Vehicle Forfeiture. -- The superintendent, or the superintendent's designee, of each county school system shall report by October 1 of each year to the Department of Public Instruction the receipts received by the county school from the sale of seized vehicles and all costs to the county board of education for administering the DWI motor vehicle forfeiture law. The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee annually by December 1 the results of these reports filed by the county school superintendents under this section.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1336*
Judiciary Committee Substitute Adopted 7/21/98
Finance Committee Substitute #2 Adopted 8/3/98
Fourth Edition Engrossed 8/4/98
House Committee Substitute Favorable 8/12/98
Proposed House Committee Substitute S1336-PCS4713-SE006

Short Title: 1998 Gov. DWI Amendments. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES, AND CHILD CARE VEHICLES; AND TO PROVIDE FOR IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER TWENTY-ONE YEARS OF AGE; AND TO INCREASE THE FINES FOR DWI OFFENSES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. DWI FORFEITURE REVISIONS.

Section 1. G.S. 20-4.01(1b) reads as rewritten:

"(1b) Alcohol Concentration. -- The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be

reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth."

Section 1.1. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. ~~Second~~ First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 2. G.S. 20-28.2 reads as rewritten:

"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's ~~driver's~~ drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), ~~or 20-17.2;~~ 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or~~ 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired driving.

(a1) ~~[Definitions.]~~ Definitions. -- As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, ~~and 20-28.6,~~ 20-28.7, 20-28.8, and 20-28.9, the following terms mean:

(1) Acknowledgment. -- A written document acknowledging that:

a. The motor vehicle was operated by a person charged with an offense involving impaired driving while that person's drivers license was revoked as a result of a prior impaired drivers license revocation;

b. If the motor vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, and the person is charged with an offense involving impaired driving, the motor vehicle is subject to impoundment and forfeiture; and

c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(1a) Fair Market Value. -- The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.

(2) Innocent ~~Party~~ Owner. -- A motor vehicle ~~owner who:~~ owner:

a. ~~Did not~~ Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. ~~Knew~~ Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission;

c. Whose vehicle was reported stolen;

d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

e. Who is in the business of renting vehicles, the driver is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.

(2a) Insurance Company. -- Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.

(2b) Insurance Proceeds. -- Proceeds paid under an insurance policy for damage to a seized motor vehicle less any payments actually paid to valid lienholders and for towing and storage costs incurred for the motor vehicle after the time the motor vehicle became subject to seizure.

(3) Lienholder. -- A person who holds a perfected security interest in a motor vehicle at the time of seizure.

(3a) Motor Vehicle Owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.

(4) Order of Forfeiture. -- An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor vehicle and any insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

~~(5) Possessory Lien. -- A lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to this lien shall not exceed five dollars ($5.00) per day.~~

(6) Registered Owner. -- A person in whose name a registration card for a motor vehicle is ~~issued.~~ issued at the time of seizure.

~~(7) Vehicle Owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued.~~

(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. -- If at a sentencing hearing ~~conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(e)(2) applies,~~ for the underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside, the judge determines by the greater weight of the evidence that the defendant is guilty of an offense involving impaired driving and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense ~~of impaired driving~~ becomes property subject to an order of forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. -- In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this ~~section,~~ section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall ~~determine the identity of every vehicle owner. The prosecutor shall also determine if there are any lienholders noted on the vehicle's certificate of title. The State shall~~ notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least ~~fourteen~~ 10 days before the hearing at which an order of forfeiture may be entered.

(c1) Motor Vehicles Involved in Accidents. -- If a motor vehicle subject to forfeiture was damaged while the defendant operator was committing the underlying offense involving impaired driving, or was damaged incident to the seizure of the motor vehicle, the Division shall determine the name of any insurance companies that are the insurers of record with the Division for the motor vehicle at the time of

the seizure or that may otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle was involved in an accident, the Division shall notify the insurance companies that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of superior court of the county where the motor vehicle driver was charged to be held and disbursed pursuant to further orders of the court. Any insurance company that receives written or other actual notice of seizure pursuant to this section shall not be relieved of any legal obligation under any contract of insurance unless the claim for property damage to the seized motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The insurance company paying insurance proceeds to the clerk of court pursuant to this section shall be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds pursuant to further orders of the court.

(d) ~~Duty of Judge.~~ Forfeiture Hearing. -- ~~The trial judge~~ Unless a motor vehicle that has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the ~~operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section.~~ underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a separate forfeiture hearing held not less than 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside. If at the ~~sentencing hearing, or at a subsequent~~ forfeiture hearing, the judge determines that the ~~requirements of subsections (a) through (e) of this section exist and the defendant was the only motor vehicle owner at the time of the offense,~~ motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a ~~subsequent~~ forfeiture hearing, the judge determines that the ~~requirements of subsections (a) through (e) of this section exist and the defendant was not the only vehicle owner at the time of the offense,~~ motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the evidence, that such motor vehicle owner is an innocent ~~party~~ owner as defined ~~by subdivision (a1)(2) of~~ in this section, in which case the trial judge shall order the motor vehicle released to the innocent ~~party vehicle~~ owner pursuant to the provisions of subsection (e) of this section. In any case where the motor vehicle is ordered forfeited, the judge ~~shall either:~~ shall:

(1) a. Authorize the ~~school board to sell~~ sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use pursuant to G.S. 20-28.5; or

~~(2)~~ b. ~~Release~~ Order the motor vehicle released to ~~an intervening~~ a lienholder pursuant to the provisions of subsection ~~(g)~~ (f) of this ~~section.~~ section; and

(2) a. Order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education; and

b. Order any outstanding insurance claims be assigned to the county board of education in the event the motor vehicle has been damaged in an accident incident to the seizure of the motor vehicle.

If the judge determines that the ~~requirements of subsection (a) and (b) of this section exist~~ motor vehicle is subject to forfeiture pursuant to this section, but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

(e) ~~Return~~ Release of Vehicle to Innocent Motor Vehicle Owner. -- ~~If~~ At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) ~~that~~ the petitioner is an ~~"innocent party",~~ 'innocent owner', as defined by this section, a judge shall order the motor vehicle ~~returned~~ released to ~~the~~ that ~~owner.~~ owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

~~This release~~ Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this Chapter; and

~~(3) The payment of towing and storage fees; fees, except in the case of release to an innocent vehicle owner; and~~

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was

revoked unless the innocent ~~vehicle~~ owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

(f) Release to Lienholder. -- ~~The~~ At a forfeiture hearing, the trial judge shall order a forfeited motor vehicle released to the lienholder upon payment of all towing and storage charges incurred as a result of the seizure of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) The lienholder's interest ~~is equal to or greater than the fair market value of the vehicle;~~ has been perfected and appears on the title to the forfeited vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or to the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf;

(3) The forfeited motor vehicle had not previously been released to the ~~lienholder; and~~ lienholder;

(4) ~~The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.~~ The owner is in default under the terms of the security instrument evidencing the interest of the lienholder and as a consequence of the default the lienholder is entitled to possession of the motor vehicle; and

(5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder.

A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to the defendant, the vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner shall not be liable for damages arising out of such refusal. The defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf are prohibited from purchasing the motor vehicle at any sale conducted by the lienholder.

~~(g) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~"

Section 3. G.S. 20-28.3 reads as rewritten:

"**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license revoked.**

(a) ~~[Vehicles Subject to Seizure.]~~ Motor Vehicles Subject to Seizure. -- A motor vehicle that is driven by a person ~~in violation of G.S. 20-138.1 or G.S. 20-138.5~~ who is charged with an offense involving impaired driving is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).

(b) Duty of Officer. -- If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. ~~The officer shall cause to be issued written notification of impoundment to any vehicle owner who was not operating or present in the vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division records. This written notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall state the reason for the impoundment and the procedure for requesting release of the vehicle.~~ The seizing officer shall notify the ~~Division~~ executive agency designated under subsection (b1) of this section as soon as practical but no later than 72 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the ~~Division.~~ executive agency designated under subsection (b1) of this section. ~~Within 72 hours of the seizure of the vehicle the officer shall also cause notice of the impoundment and intent to forfeit the vehicle to be given to any lienholder of record with the Division.~~

(b1) Notification of Impoundment. -- Within 48 hours of receipt of the notice of seizure, an executive agency designated by the Governor shall issue written notification of impoundment to the Division, to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired

driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order.

(c) Review by Magistrate. -- Upon ~~seizing~~ determining that there is probable cause for seizing a motor vehicle, the seizing officer shall present to a magistrate within the county where the ~~vehicle was seized~~ driver was charged an affidavit of impoundment setting forth the basis upon which the motor vehicle has been or will be seized for forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the motor vehicle held. The magistrate may request additional information and may hear from the ~~operator~~ defendant if the ~~operator~~ defendant is present. If the magistrate determines the requirements of this section have not been met, the magistrate shall order the motor vehicle released to a motor vehicle owner upon payment of towing and storage fees. If the motor vehicle has not yet been seized, and the magistrate determines that seizure is appropriate, the magistrate shall issue an order of seizure of the motor vehicle. The magistrate shall provide a copy of the order of seizure to the clerk of court. The clerk shall provide copies of the order of seizure to the district attorney and the attorney for the county board of education.

(c1) Effecting an Order of Seizure. -- An order of seizure shall be valid anywhere in the State. Any officer with territorial jurisdiction and who has subject matter jurisdiction for violations of this Chapter may use such force as may be reasonable to seize the motor vehicle and to enter upon the property of the defendant to accomplish the seizure. An officer who has probable cause to believe the motor vehicle is concealed or stored on private property of a person other than the defendant may obtain a search warrant to enter upon that property for the purpose of seizing the motor vehicle.

(d) Custody of Motor Vehicle. -- ~~The~~ Unless the motor vehicle is towed pursuant to a statewide or regional contract, or a contract with the county board of education, the seized motor vehicle shall be towed by a commercial towing company designated by the law enforcement agency that seized the motor vehicle. ~~to a location designated by the county school board for the county in which the operator of the vehicle is charged and~~ Seized motor vehicles not towed pursuant to a statewide or regional contract or a contract with a county board of education shall be retrieved from the commercial towing company within a reasonable time, not to exceed 10 days, by the county board of education or their agent who must pay towing and storage fees to the commercial towing company when the motor vehicle is retrieved. If either a statewide or regional contractor, or the county board of education, chooses to contract for local towing services, all towing companies on the towing list for each law enforcement agency with jurisdiction within the county shall be given written notice and an opportunity to submit proposals prior to a contract for local towing services being awarded. The seized motor vehicle is ~~placed~~ under the constructive possession of the ~~school board~~ county board of education for the county in which the

operator of the vehicle is charged at the time the vehicle is delivered to a location designated by the county board of education or delivered to its agent pending release or ~~sale.~~ sale, or in the event a statewide or regional contract is in place, under the constructive possession of the Department of Public Instruction, on behalf of the State at the time the vehicle is delivered to a location designated by the Department of Public Instruction or delivered to its agent pending release or sale. ~~Each~~ Absent a statewide or regional contract that provides otherwise, each county ~~school board~~ board of education may elect to have seized motor vehicles stored on property owned or leased by the ~~school~~ county board of education and charge ~~no~~ a reasonable fee for ~~storage.~~ storage, not to exceed ten dollars ($10.00) per day. In the alternative, the county ~~school board~~ board of education may contract with a commercial towing and storage facility or other private entity for the ~~storage~~ towing, storage, and disposal of seized motor vehicles, and a storage fee of not more than ~~five~~ ten dollars ~~($5.00)~~ ($10.00) per day may be charged. Except for gross negligence or intentional misconduct, the county board of education, or any of its employees, shall not be liable to the owner or lienholder for damage to or loss of the motor vehicle or its contents, or to the owner of personal property in a seized vehicle, during the time the motor vehicle is being towed or stored pursuant to this subsection.

(e) Release of Motor Vehicle Pending Trial. -- A motor vehicle owner, ~~or a lienholder of a vehicle,~~ other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the motor vehicle.

The clerk shall release the motor vehicle to a ~~qualified~~ nondefendant motor vehicle owner ~~or a lienholder~~ conditioned upon payment of all towing and storage charges incurred as a result of seizure and impoundment of the motor vehicle under the following conditions:

(1) The motor vehicle has been ~~stored~~ seized for not less than 24 hours;

~~(2) All towing and storage charges have been paid;~~

(3) ~~Execution of a good and valid bond with sufficient sureties in an amount equal to twice the value of the seized vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3,~~ A bond in an amount equal to the fair market value of the motor vehicle as defined by G.S. 20-28.2 has been executed and is secured by a cash deposit in the full amount of the bond, by a recordable deed of trust to real property in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county school fund and conditioned on return of the motor vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of ~~trial of the operator;~~ any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released;

(4) ~~If a qualified vehicle owner, execution~~ Execution of an acknowledgment as described in G.S. 20-28.2(a1); ~~and~~

(5) A check of the records of the Division indicates that the requesting motor vehicle owner has not previously executed an acknowledgment naming the operator of the seized ~~vehicle.~~ motor vehicle; and

(6) A bond posted to secure the release of this motor vehicle under this subsection has not been previously ordered forfeited under G.S. 20-28.5.

In the event a nondefendant motor vehicle owner who obtains temporary possession of a seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of the forfeiture hearing as noticed by the district attorney under G.S. 20-28.3(c) or otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this subsection, the bond posted shall be ordered forfeited and an order of seizure shall be issued by the court. Additionally, a nondefendant motor vehicle owner or lienholder who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

(e1) Pretrial Release of Motor Vehicle to Innocent Owner. -- A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall schedule a hearing before a judge to be held within 10 business days or as soon as thereafter may be feasible. Notice of the hearing shall be given to the petitioner, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the petitioner is an innocent owner and that the motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the petitioner subject to the conditions of release as set forth in G.S. 20-28.2(e) and no hearing shall be held. The clerk shall send a copy of the order of release to the county board of education attorney. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. Accordingly, the State shall not be required to prove the underlying offense of impaired driving or the existence of a prior drivers license revocation. If the court determines that the petitioner is an innocent owner, the court shall release the motor vehicle to the petitioner subject to the same conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). An order issued under this subsection finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e2) Pretrial Release of Motor Vehicle to Defendant Owner. -- A defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired

driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the defendant's motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the defendant upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle, subject to the satisfactory proof of the identity of the defendant as a motor vehicle owner and the existence of financial responsibility to the extent required by Article 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy of the order of release to the attorney for the county board of education. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of the underlying offense of impaired driving only the existence of a prior drivers license revocation as an impaired driving license revocation. Accordingly, the State shall not be required to prove the underlying offense of impaired driving. An order issued under this subsection finding that the defendant failed to establish that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a) may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e3) Pretrial Release of Motor Vehicle to Lienholder. -- A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) Default on the obligation secured by the motor vehicle has occurred;

(2) As a consequence of default, the lienholder is entitled to possession of the motor vehicle;

(3) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the

sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;

(4) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or the motor vehicle owner; and

(5) The forfeited motor vehicle had not previously been released to the lienholder.

The clerk of superior court may order a seized vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle at any time when all interested parties have, in writing, waived any rights that they may have to notice and a hearing, and the lienholder has agreed to the provision of subdivision (4) above. A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to:

(1) The defendant;

(2) The motor vehicle owner who owned the motor vehicle immediately prior to forfeiture; or

(3) Any person acting on the behalf of the defendant or the motor vehicle owner,

shall not be liable for damages arising out of such refusal. However, any subsequent violation of the conditions of release by the lienholder shall be punishable by civil or criminal contempt.

~~(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.~~

~~(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~

(h) Insurance Proceeds. -- In the event a motor vehicle is damaged incident to the conduct of the defendant which gave rise to the defendant's arrest and seizure of the motor vehicle pursuant to this section, the county board of education, or its authorized designee, is authorized to negotiate the county board of education's interest with the insurance company and to compromise and accept settlement of any claim for damages. Property insurance proceeds accruing to the defendant, or other owner of the seized motor vehicle, shall be paid by the responsible insurance company directly to the clerk of superior court in the county where the motor vehicle driver was charged. If the motor vehicle is declared a total loss by the insurance company responsible for the motor vehicle, the clerk of superior court, upon application of the county board of education, shall enter an order that the motor vehicle be released to the insurance company upon payment into the court of all insurance proceeds for damage to the motor vehicle after payment of towing and storage costs and all valid liens. The clerk of superior court shall provide the Division with a certified copy of the order entered pursuant to this subsection, and the Division shall transfer title to the insurance company or to such other person or entity as may be designated by the insurance company. Insurance proceeds paid to

the clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to G.S. 20-28.5 and shall be disbursed pursuant to further orders of the court. An affected motor vehicle owner or lienholder who objects to any agreed upon settlement under this subsection may file an independent claim with the insurance company for any additional monies believed owed. Notwithstanding any other provisions in this Chapter, nothing in this section or G.S. 20-28.2 shall require an insurance company to make payments in excess of those required pursuant to its policy of insurance on the seized motor vehicle.

(i) Expedited Sale of Seized Motor Vehicles in Certain Cases. -- In order to avoid additional liability for towing and storage costs pending resolution of the criminal proceedings of the defendant, the county board of education may, after expiration of 90 days from the date of seizure, sell any motor vehicle having a fair market value of one thousand five hundred dollars ($1,500) or less. The county board of education may also sell a motor vehicle, regardless of the fair market value, any time the towing and storage costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with the consent of all the motor vehicle owners. Any sale conducted pursuant to this subsection shall take place upon not less than 10 days' prior notice to the motor vehicle owners and lienholders, and the proceeds of the sale, after the payment of outstanding towing and storage costs, shall be deposited with the clerk of superior court. If an order of forfeiture is entered by the court, the court shall order the proceeds held by the clerk to be disbursed as provided in G.S. 20-28.5(b). If the court determines that the motor vehicle is not subject to forfeiture, the court shall order the proceeds held by the clerk to be disbursed first to pay the sale, towing, and storage costs, second to pay outstanding liens on the motor vehicle, and the balance to be paid to the motor vehicle owners.

(j) Retrieval of Certain Personal Property. -- At reasonable times, the entity charged with storing the motor vehicle may permit owners of personal property not affixed to the motor vehicle to retrieve those items from the motor vehicle, provided satisfactory proof of ownership of the motor vehicle or the items of personal property is presented to the storing entity.

(k) County Board of Education Right to Appear and Participate in Proceedings. -- The attorney for the county board of education shall be given notice of all proceedings regarding offenses involving impaired driving related to a motor vehicle subject to forfeiture. The attorney for the county board of education shall also have the right to appear and to be heard on all issues relating to the seizure, possession, release, forfeiture, sale, and other matters related to the seized vehicle under this section. With the prior consent of the county board of education, the district attorney may delegate to the attorney for the county board of education any or all of the duties of the district attorney under this section. Clerks of superior court, law enforcement agencies, and all other agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor vehicles are authorized and directed to provide county boards of education with access to that information and to do so by electronic means when existing technology makes this type of transmission possible.

(l) Payment of Fees Upon Conviction. -- If the driver of a motor vehicle seized pursuant to this section is convicted of an offense involving impaired driving, the defendant shall be ordered to pay as restitution to the county board of education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the extent the costs were not covered by the proceeds from the forfeiture and sale of the motor vehicle. In addition, a civil judgment for the costs under this section in favor of the party to whom the restitution is owed shall be docketed by the clerk of superior court. If the defendant is sentenced to an active term of imprisonment, the civil judgment shall become effective and be docketed when the defendant's conviction becomes final. If the defendant is placed on probation, the civil judgment in the amount found by a judge during the probation revocation or termination hearing to be due shall become effective and be docketed by the clerk when the defendant's probation is revoked or terminated.

(m) Trial Priority. -- Trials of impaired driving offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

Once scheduled, the case shall not be continued unless all of the following conditions are met:

(1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard.

(2) The judge makes a finding of a 'compelling reason' for the continuance.

(3) The motion and finding are attached to the court case record.

Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders pursuant to G.S. 20-28.2(d).

Should a defendant appeal the conviction to superior court, any party may file a motion for review to consider whether the motor vehicle may be released pursuant to G.S. 20-28.2(e) or (f) or G.S. 20-28.3(e), (e1), or (e3)."

Section 4. G.S. 20-28.4 reads as rewritten:

"**§ 20-28.4. Release of impounded motor vehicles by judge.**

~~(a) Release to Innocent Vehicle Owner. -- A vehicle owner who was not the operator of the vehicle at the time of the offense may petition the court for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).~~

~~(b) Acknowledgment Required. -- The vehicle owner seeking release under this section or pretrial release under G.S. 20-28.3 shall sign an acknowledgment as described in G.S. 20-28.2(a1)(1).~~

~~(c) Release to Lienholder. -- A district court judge may order a forfeited vehicle released to a lienholder if the judge determines, by the greater weight of the evidence, that the lienholder satisfies the criteria as set out in G.S. 20-28.2(f).~~

(d) Release Upon Conclusion of Trial. -- If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

(1) Is subsequently not convicted of ~~either G.S. 20-138.1 or G.S. 20-138.5~~ an offense involving impaired driving due to dismissal or a finding of not guilty; or

(2) The judge at ~~the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(e)(2),~~ a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) fails to find that the drivers license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2; and

(3) The vehicle has not previously been released to a lienholder pursuant to G.S. 20-28.3(e3),

the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be ~~returned~~ released to the motor vehicle ~~owner.~~ owner conditioned upon payment of towing and storage costs. Notwithstanding G.S. 44A-2(d), if the owner of the seized motor vehicle does not obtain release of the vehicle within 30 days from the date of the court's order, the possessor of the seized motor vehicle has a mechanics' lien on the seized motor vehicle for the full amount of the towing and storage charges incurred since the motor vehicle was seized and may dispose of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes.

~~If the court finds that probable cause did not exist to seize the motor vehicle, the court shall order the vehicle released.~~

~~A determination which results in the return or release of the seized vehicle under this section authorizes the driver, vehicle owner, or lienholder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees recovered pursuant to this subsection shall be paid by the county school board from forfeitures paid into the county school fund.~~"

Section 5. G.S. 20-28.5 reads as rewritten:

"**§ 20-28.5. Forfeiture of impounded ~~vehicle.~~ motor vehicle or funds.**

(a) Sale. -- ~~Unless a judge orders the vehicle returned to an innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be a judicial~~ A motor vehicle ordered forfeited and sold shall be sold at a public sale conducted in accordance with the provisions of ~~Parts 1 and 2 of Article 29A of Chapter 1~~ Article 12 of Chapter 160A of the General ~~Statutes~~ Statutes, applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the notice requirements of this subsection, and shall be conducted by the county ~~school board~~ board of education or a person acting on its behalf. ~~In addition to the notice requirements of Part 2 of Article 29A of Chapter 1 of the General Statutes, notice of sale~~ Notice of sale, including the date, time, location, and manner of sale, shall ~~also~~ be given by ~~certified mail, return receipt requested,~~ first-class mail to all motor vehicle owners of the vehicle to be sold at the address shown by the ~~Division's~~ records of the Division and at any other address of the motor vehicle owner as may be found in the criminal file in which the forfeiture was ordered. ~~Notice~~ Written notice of sale shall also be ~~by certified mail, return receipt~~

~~requested,~~ given to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division. Notices required to be given under this subsection shall be mailed at least 14 days prior to the date of sale. A lienholder shall be permitted to purchase the motor vehicle at any such sale by bidding in the amount of its lien, if that should be the highest bid, without being required to tender any additional funds, other than the towing and storage fees. The county board of education, or its agent, shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this ~~section~~ section, G.S. 20-28.2(f)(5), or G.S. 20-28.3(e3)(3), shall first be applied to the cost of sale and then to satisfy towing and storage ~~liens and the cost of sale.~~ costs. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded ~~with the Division~~ prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the motor vehicle was ordered forfeited. If there is more than one school board in the county, then the net proceeds of sale, after reimbursement to the county board of education of reasonable administrative costs incurred in connection with the forfeiture and sale of the motor vehicle, shall be distributed in the same manner as fines and other forfeitures. ~~Vehicles sold~~ The sale of a motor vehicle pursuant to this section shall be deemed to extinguish all existing liens on the motor vehicle and the motor vehicle shall be transferred free and clear of any liens.

(c) Retention of Motor Vehicle. -- ~~The county~~ A board of education may, at its option, retain any forfeited motor vehicle for its ~~use.~~ use upon payment of towing and storage costs. If the motor vehicle is retained, any valid lien of record at the time of the initial seizure of the motor vehicle shall be satisfied by the ~~school board~~ county board of education relieving the motor vehicle owner of all liability for the obligation secured by the motor vehicle. If there is more than one school board in the county, and the motor vehicle is retained by a board of education, then the fair market value of the motor vehicle, less the costs for towing, storage, reasonable administrative costs, and liens paid, shall be used to determine and pay the share due each of the school boards in the same manner as fines and other forfeitures.

~~(d) [Counties with Multiple School Boards.] -- If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share due each of the school boards in the same manner as fines and other forfeitures.~~

(e) Order of Forfeiture; Appeals. -- An order of forfeiture is stayed pending appeal of a conviction for an offense that is the basis for the order. When the conviction of an offense that is the basis for an order of forfeiture is appealed from district court, the issue of forfeiture shall be heard in superior court de novo. Appeal from a final order of forfeiture shall be to the Court of Appeals."

Section 6. G.S. 20-28.6 is repealed.

Section 7. G.S. 20-28.7 reads as rewritten:

"**§ 20-28.7. Responsibility of Division of Motor Vehicles.**

The Division shall establish procedures by rule to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-28.4, ~~20-28.5, and 20-28.6.~~ and 20-28.5."

Section 8. Article 2 of Chapter 20 of the General Statutes is amended by adding two new sections to read:

"**§ 20-28.8. Reports to the Division.**

In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any other information that must be reported pursuant to this Chapter, the clerk of superior court shall report to the Division by electronic means the execution of an acknowledgment as defined in G.S. 20-28.2(a1)(1), the entry of an order of forfeiture as defined in G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and G.S. 20-28.4. Each report shall include any of the following information that has not previously been reported to the Division in the case: the name, address, and drivers license number of the defendant; the name, address, and drivers license number of the nondefendant motor vehicle owner, if known; and the make, model, year, vehicle identification number, state of registration, and vehicle registration plate number of the seized vehicle, if known.

"**§ 20-28.9. Authority [illegible] the Department of Public Instruction to administer a statewide or regional towing, storage, and sales program for driving while impaired vehicles forfeited.**

(a) The Department of Public Instruction is authorized to enter into a contract for a statewide service or contracts for regional services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized under G.S. 20-28.3 shall be subject to contracts entered into pursuant to this section. Contracts shall be let by the Department of Public Instruction in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. All contracts shall ensure the safety of the motor vehicles while held and any funds arising from the sale of any seized motor vehicle. The contract shall require the contractor to maintain and make available to the agency a computerized up-to-date inventory of all motor vehicles held under the contract, together with an accounting of all accrued charges, the status of the vehicle, and the county school fund to which the proceeds of sale are to be paid. The contract shall provide that the contractor shall pay the towing and storage charges owed on a seized vehicle to a commercial towing company at the time the seized vehicle is obtained from the commercial towing company, with the contractor being reimbursed this expense when the vehicle is released or sold. The Department shall not enter into any contract under this section under which the State will be obligated to pay a deficiency arising from the sale of any forfeited motor vehicle.

(b) The Department, through its contractor or contractors designated in accordance with subsection (a) of this section, may charge a reasonable fee for storage not to exceed ten dollars ($10.00) per day for the storage of seized vehicles pursuant to G.S. 20-28.3.

(c) In order to help defray the administrative costs associated with the administration of this section, the Department shall collect a ten dollar ($10.00) administrative fee from a person to whom a seized vehicle is released at the time the motor vehicle is released and shall collect a ten dollar ($10.00) administrative fee out of the proceeds of the sale of any forfeited motor vehicle. The funds collected under this subsection shall be paid to the General Fund."

Section 9. G.S. 20-54 reads as rewritten:

"**§ 20-54. Authority for refusing registration or certificate of title.**

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.

(2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

(3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.

(4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State.

(5) The required fee has not been paid.

(6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid.

(7) The Division has been notified that the motor vehicle has been seized by a law enforcement officer and is subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute. However, the Division shall not prevent the renewal of existing registration prior to an order of forfeiture."

Section 10. Part 2 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-54.1. Forfeiture of right of registration.**

(a) Upon receipt of notice of conviction of a violation of an offense involving impaired driving while the person's license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the registration of all motor vehicles registered in the convicted person's name and shall not register a motor vehicle in the convicted person's name until the convicted person's license is restored. Upon receipt of notice of revocation of registration from the Division, the convicted person shall surrender the registration on all motor

vehicles registered in the convicted person's name to the Division within 10 days of the date of the notice.

(b) Upon receipt of a notice of conviction under subsection (a) of this section, the Division shall revoke the registration of the motor vehicle seized, and the owner shall not be allowed to register the motor vehicle seized until the convicted operator's drivers license has been restored. The Division shall not revoke the registration of the owner of the seized motor vehicle if the owner is determined to be an innocent owner. The Division shall revoke the owner's registration only after the owner is given an opportunity for a hearing to demonstrate that the owner is an innocent owner as defined in G.S. 20-28.2. Upon receipt of notice of revocation of registration from the Division, the owner shall surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the notice."

Section 11. G.S. 20-55 reads as rewritten:

"§ 20-55. Examination of registration records and index of ~~stolen~~ seized, stolen, and recovered vehicles.

The Division, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the engine and serial numbers shown in the application with its record of registered motor vehicles, and against the index of ~~stolen~~ seized, stolen, and recovered motor vehicles required to be maintained by this Article."

Section 12. G.S. 20-114(c) reads as rewritten:

"(c) It shall also be the duty of every ~~sheriff of every county of the State and of every police or peace officer of the State~~ law enforcement officer to make immediate report to the Commissioner of all motor vehicles reported to ~~him~~ the officer as abandoned or that are seized by ~~him~~ the officer for being used for illegal transportation of alcoholic beverages or other unlawful purposes, or seized and are subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until notice on a form approved by the Commissioner shall have been given the Commissioner at least 20 days before the date of such sale."

Section 12.1. G. S. 20-166.1(h) reads as rewritten:

"(h) Forms. -- The Division must provide forms to persons required to make reports under this section and the reports must be made on the forms provided. The forms must ask for the following information about a reportable accident:

(1) The cause of the accident.
(2) The conditions existing at the time of the accident.
(3) The persons and vehicles involved.
(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 13. G.S. 1-339.4 reads as rewritten:

"§ 1-339.4. Who may hold sale.

An order of sale may authorize the persons designated below to hold the sale:

(1) In any proceeding, a commissioner specially appointed therefor; ~~or~~

(2) In a proceeding to sell property of a decedent, the administrator, executor or collector of such decedent's estate;
(3) In a proceeding to sell property of a minor, the guardian of such minor's estate;
(4) In a proceeding to sell property of an incompetent, the guardian or trustee of such incompetent's estate;
(5) In a proceeding to sell property of an absent or missing person, the administrator, collector, conservator, or guardian of the estate of such absent or missing person;
(6) In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust;
(7) In a receivership proceeding, the receiver;
(8) In a proceeding to sell property of a trust, the ~~trustee;~~ trustee.
~~(9) In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the county school board or a person acting on its behalf.~~"

Section 14. G.S. 44A-2(d) reads as rewritten:

"(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of ~~his~~ the person's business pursuant to an express or implied contract with an owner or legal possessor of the motor ~~vehicle~~ vehicle, except for a motor vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests. Payment for towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2 through G.S. 20-28.5."

Section 15. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --
(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, ~~within 15 days of receipt of notice from the lienor,~~ to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien.

The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is ~~desired and the Division shall notify lienor.~~ desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, ~~the Division shall notify the lienor,~~ and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the ~~Division notifies the lienor that the~~ registered or certified mail notice has been returned as undeliverable, or if ~~the Division cannot ascertain~~ the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only

to valid claims against that vehicle, and any excess proceeds of the sale shall escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom ~~the Division has mailed~~ notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

Section 16. G.S. 58-71-1 reads as rewritten:

"**§ 58-71-1. Definitions.**

The following words when used in this Article shall have the following meanings:

(1) 'Accommodation bondsman' is a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. 'Consideration' as used in this subdivision does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of said bail bond.

(2) 'Bail bond' shall mean an undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State in a stated amount; and may include an unsecured appearance bond, a

premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one surety. A bail bond may also include a bond securing the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(3) 'Bail bondsman' shall mean a surety bondsman, professional bondsman or an accommodation bondsman as hereinafter defined.

(4) 'Commissioner' shall mean the Commissioner of Insurance.

(5) 'Insurer' shall mean any domestic, foreign, or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this State.

(6) 'Obligor' shall mean a principal or a surety on a bail bond.

(7) 'Principal' shall mean a defendant or witness obligated to appear in court as required upon penalty of forfeiting bail under a bail ~~bond.~~ bond or a person obligated to return a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).

(8) 'Professional bondsman' shall mean any person who is approved and licensed by the Commissioner and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(9) 'Runner' shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or to assist in apprehension and surrender of defendant to the court, or keeping defendant under necessary surveillance, or to execute bonds on behalf of the licensed bondsman when the power of attorney has been duly recorded. 'Runner' does not include, however, a duly licensed attorney-at-law or a law-enforcement officer assisting a bondsman.

(10) 'Surety' shall mean one who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

(11) 'Surety bondsman' means any person who is licensed by the Commissioner as a surety bondsman under this Article, is appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings, and receives or is promised consideration for doing so."

Section 17. G.S. 58-71-35(a) reads as rewritten:

"(a) ~~The~~ Except for bonds issued to secure the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e), the procedure for forfeiture of bail shall be that provided in Article 26 of Chapter 15A of the General Statutes and all provisions of that Article shall continue in full force and effect."

PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

Section 18. G.S. 20-17(a) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

(1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.

(2) Either of the following impaired driving offenses:

a. Impaired driving under G.S. 20-138.1.

b. Impaired driving under G.S. ~~20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of 0.08 or more.~~ 20-138.2.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

(5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.

(6) Conviction upon two charges of reckless driving committed within a period of 12 months.

(7) Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

(9) Death by vehicle as defined in G.S. 20-141.4.

(10) Repealed by Session Laws 1997-443, s. 19.26(b).

(11) Conviction of assault with a motor vehicle.

(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7."

(13) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(14) A conviction of driving a school bus, school activity bus, or child care vehicle after consuming alcohol under G.S. 20-138.2B."

Section 19. G.S. 20-17.4 reads as rewritten:

"**§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

(a) One Year. -- Any of the following disqualifies a person from driving a commercial motor vehicle for one year:

(1) A first conviction of G.S. 20-138.1, driving while impaired, that occurred while the person was driving a motor vehicle not a commercial motor vehicle.
(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.
(3) A first conviction of G.S. 20-166, hit and run, involving a commercial motor vehicle driven by the person.
(4) A first conviction of a felony in the commission of which a commercial motor vehicle was used.
(5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.
(6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(a1) Ten-Day Disqualification. -- A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. -- A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. -- A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. -- A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) Less Than a Year. -- A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(e) Three Years. -- A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while

the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) Revocation Period. -- A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is revoked."

Section 20. G.S. 20-17.6(a) reads as rewritten:

"(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

(1) G.S. 20-138.1, driving while impaired (DWI).

(2) G.S. 20-138.2, commercial ~~DWI, if the person's license was revoked under G.S. 20-17(2)~~ DWI.

(3) G.S. 20-138.3, driving while less than 21 years old after consuming alcohol or drugs.

(4) G.S. 20-138.2A, driving a commercial motor vehicle with an alcohol concentration of greater than 0.00 and less than 0.04, if the person's drivers license was revoked under G.S. 20-17(a)(13).

(5) G.S. 20-138.2B, driving a school bus, a school activity bus, or a child care vehicle with an alcohol concentration of greater than 0.00, if the person's drivers license was revoked under G.S. 20-17(a)(14)."

Section 21. G.S. 20-19 is amended by adding a new subsection to read:

"(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year."

Section 22. G.S. 20-36 reads as rewritten:

"**§ 20-36. Ten-year-old convictions not considered.**

~~No~~ Except for a second or subsequent conviction for violating G.S. 20-138.2, a third or subsequent violation of G.S. 20-138.2A, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of ~~such~~ that conviction."

Section 23. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6)."

Section 24. G.S. 20-138.2(e) reads as rewritten:

"(e) ~~Punishment; Effect When Impaired Driving Offense Also Charged. --~~ Punishment. -- The offense in this section is a ~~Class 1~~ misdemeanor and any defendant convicted under this section shall be sentenced under G.S. 20-179. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, ~~but~~ and if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1."

Section 25. G.S. 20-179(a) reads as rewritten:

"(a) Sentencing Hearing Required. -- After a conviction for impaired driving under ~~G.S. 20-138.1,~~ G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration."

PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES.

Section 26. G.S. 20-4.01(27) reads as rewritten:

"(27) Passenger Vehicles. --

a. Excursion passenger vehicles. -- Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. -- Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. -- Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.

c1. Child care vehicles. -- Vehicles under the direction and control of a child care facility, as defined in G.S. 110-86(3), and driven by an owner, employee, or agent of the child care facility for the primary purpose of transporting children to and from the child care facility, or to and from a place for participation in an event or activity in connection with the child care facility.

d. Motorcycles. -- Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. -- A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

d2. Motor home or house car. -- A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a

portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. -- A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. -- A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. -- Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. -- Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. -- All other passenger vehicles not included in the above definitions."

Section 27. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor

punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2)."

PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS OF AGE.

Section 28. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; ~~or~~

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration."

Section 29. G.S. 20-16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle.~~ Who Are Charged With Certain Implied-Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);
(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and
(4) The person:
a. Willfully refuses to submit to the chemical analysis;
b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving; ~~or~~
c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial ~~vehicle.~~ vehicle; or
d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 30. G.S. 20-16.5(b1) reads as rewritten:

"(b1) Precharge Test Results as Basis for Revocation. -- Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:
(1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and
(2) ~~He~~ The person has:
a. An alcohol concentration of 0.08 or more at any relevant time after driving; ~~or~~
b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; ~~and~~ or
c. Any alcohol concentration at any relevant time after driving and the person is under 21 years of age; and
(3) ~~He~~ The person is charged with an implied-consent offense."

PART V. INCREASE FINES FOR DWI OFFENSES.

Section 31. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to ~~two thousand dollars ($2,000)~~ four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 32. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not

less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 33. G.S. 20-179(i) reads as rewritten:

"(i) Level Three Punishment. -- A defendant subject to Level Three punishment may be fined up to ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
(2) Perform community service for a term of at least 72 hours; or
(3) Not operate a motor vehicle for a term of at least 90 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 34. G.S. 20-179(j) reads as rewritten:

"(j) Level Four Punishment. -- A defendant subject to Level Four punishment may be fined up to ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or
(2) Perform community service for a term of 48 hours; or
(3) Not operate a motor vehicle for a term of 60 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 35. G.S. 20-179(k) reads as rewritten:

"(k) Level Five Punishment. -- A defendant subject to Level Five punishment may be fined up to ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of

imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

(3) Not operate a motor vehicle for a term of 30 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

PART VI. MISCELLANEOUS PROVISIONS.

Section 36. From funds appropriated to the Department of Public Instruction, the Department shall be authorized to hire a person to handle the administration of a statewide contract, or regional contracts for services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.9.

Section 37. The Joint Legislative Education Oversight Committee shall study the effect of the DWI forfeiture provisions as set forth in G.S. 20-28.2 through G.S. 20-28.9 and the financial impact on county boards of education. The study shall include, among other relevant information, a statistical analysis of the number of vehicles seized, the length of time vehicles are held until disposition by the court, the percentage of seized vehicles forfeited, the sale price of seized vehicles sold, the average towing and storage costs, and county school administrative costs associated with the seizure and forfeiture of the vehicles. The Committee shall recommend ways to make the procedure and process for managing seized and forfeited vehicles more efficient and effective. The Committee may report to the 1999 General Assembly.

Section 38. G.S. 115C-276 is amended by adding a new subsection to read:

"(s) Report on DWI Vehicle Forfeiture. -- The superintendent, or the superintendent's designee, of each county school system shall report by October 1 of each year to the Department of Public Instruction the receipts received by the county school from the sale of seized vehicles and all costs to the county board of education for administering the DWI motor vehicle forfeiture law. The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee annually by December 1 the results of these reports filed by the county school superintendents under this section."

PART VII. EFFECTIVE DATE.

Section 39. Parts I and VI of this act become effective October 1, 1998, and apply to offenses committed, contracts entered, and motor vehicles seized on or after that date. Parts II, III, IV, and V of this act become effective December 1, 1998, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. The provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set forth in Section 3 of this act shall also apply to vehicles held on or after the effective date as a result of seizure that occurred before, on, or after that date.

Where the expedited sales provisions of G.S. 20-28.3(i) are applied to motor vehicles seized on or after December 1, 1997, and before December 1, 1998, the county board of education shall refund any towing or storage costs received as a result of the expedited sale, if the court finds that the motor vehicle owner is not obligated to pay towing and storage costs.

Rep. Hackney

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1336 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR "ZERO TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES, AND CHILD CARE VEHICLES; AND TO PROVIDE FOR IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER TWENTY-ONE YEARS OF AGE; AND TO INCREASE THE FINES FOR DWI OFFENSES AND TO MAKE CONFORMING CHANGES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

☒ With a favorable report as to House committee substitute bill (# 2), ☐ ~~which changes~~ the title, unfavorable as to ~~Senate~~ House committee substitute bill ~~#~~ 1,

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

☐

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1552
Finance Committee Substitute Adopted 7/15/98
House Committee Substitute Favorable 8/5/98
PROPOSED HOUSE FINANCE COMMITTEE SUBSTITUTE
S1552-CSRB-8/21

Short Title: Notary Public Changes. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE NOTARY PUBLIC ACT, TO EXEMPT SOME MAPS FROM THE CERTIFICATION REQUIREMENT, TO AUTHORIZE THE SECRETARY OF STATE TO AUTHENTICATE DOCUMENTS, AND TO GIVE RELIEF TO CORPORATIONS AND LIMITED LIABILITY COMPANIES THAT HAVE BEEN ADMINISTRATIVELY DISSOLVED OR MAY BE ADMINISTRATIVELY DISSOLVED BECAUSE OF FAILURE TO FILE A CORPORATE ANNUAL REPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-2 reads as rewritten:

"**§ 10A-2. Purposes.**

This Chapter shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery."

Section 2. G.S. 10A-3 reads as rewritten:

"**§ 10A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Acknowledgment. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily.

(2) Commission. -- The written authority to perform a notarial act.

(2a) Director. -- The Director of the Notary Section of the Department of the Secretary of State.

(3) Notarial act, notary act, and notarization. -- Any act that a notary is empowered to perform under G.S. 10A-9.

(4) Notary public and notary. -- A person commissioned to perform notarial acts under this Chapter.

(5) Oath or affirmation. -- A notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary, with reference made to a Supreme Being for an oath and with no reference made to a Supreme Being for an affirmation.

(6) Official misconduct. -- Either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary ~~of State~~ to be negligent or against the public interest.

(7) Personal knowledge of identity. -- Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(8) Satisfactory evidence of identity. -- Identification of an individual based on either of the following:

a. One current document issued by a federal or state government with the individual's photograph.

b. Identification by a credible person who is personally known to the notary and who has personal knowledge of the individual's identity.

(8a) Secretary. -- The Secretary of State.

(9) Verification or proof. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has, in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document."

Section 3. G.S. 10A-4 reads as rewritten:

"**§ 10A-4. Commissioning.**

(a) Except as provided in subsection (c) of this section, the Secretary ~~of State~~ shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary ~~of State~~ and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary ~~of State~~ that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary ~~of State~~ and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. ~~The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.~~

(c) The Secretary ~~of State~~ may deny an application for commission or recommission as a notary if any of the following applies to the applicant:

(1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.

(1a) The applicant has been convicted of a felony and the applicant's rights have not been restored.

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.

(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the ~~Secretary of State.~~ Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the ~~Secretary of State.~~ Secretary.

(2) Have six months of active experience as a notary public.

(3) Maintain a current commission as a notary public.

(4) Purchase the current notary public guidebook.

(5) Pay a nonrefundable fee of fifty dollars ($50.00).

~~Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant and deputy clerks of court are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.~~ Certification to teach a course of study shall be effective for two years. A certification may be renewed by passing a recertification course taught by the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars ($50.00).

(e) ~~Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of State.~~ The following people may be certified to teach a course of study required under subsection (b) of this section without meeting the requirements of subdivisions (d)(2), (d)(3), and (d)(5), and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

(1) Registers of deeds.

(2) Clerks of court.

(3) The Director."

Section 4. G.S. 10A-9(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.

(2) The readable appearance of the notary's name, either from the notary's signature or ~~otherwise.~~ from the notary's typed, printed, or embossed name near the signature.

(3) The clear and legible appearance of the notary's stamp or seal.

(4) A statement of the date the notary's commission expires."

Section 5. G.S. 10A-10 reads as rewritten:

"**§ 10A-10. Fees of notaries.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature.

(2) For oaths or affirmations without a verification or proof, ~~two dollars ($2.00)~~ three dollars ($3.00) per person.

(3) For verifications or proofs, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature."

Section 6. G.S. 10A-11 reads as rewritten:

"**§ 10A-11. Notarial stamp or seal.**

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words "North Carolina" or an abbreviation thereof, and the words "Notary Public". The official stamp or seal, as it appears on a document, may contain a permanently imprinted or a handwritten expiration date of the notary's commission. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it. However, upon revocation, the notary shall immediately surrender the stamp or seal to the ~~Secretary of State.~~ Secretary."

Section 7. G.S. 10A-14 reads as rewritten:

"**§ 10A-14. ~~Clerks are notaries ex officio and may certify own seals.~~ Notaries ex officio.**

(a) The clerks of the superior court ~~and their assistants and deputies~~ may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts under the seals of their respective courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts under the seals of their respective offices.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Office of the Secretary of State and may certify a notarial act performed in that capacity under the seal of the Secretary of State.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10A-10. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed."

Section 8. G.S. 10A-15 is repealed.

Section 9. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is ~~erroneously~~ stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "N. C.", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for ~~Georgia,~~ another state are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~June 1, 1997.~~ August 1, 1998."

Section 10. G.S. 47-30(m) reads as rewritten:

"(m) ~~Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor.~~ Maps attached to deeds or other instruments and submitted for recording in that form must be no larger than 8 1/2 inches by 14 inches and comply with either this subsection or subsection (n) of this section. Such a map shall either (i) have ~~an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors~~ the original signature of a registered land surveyor and the surveyor's seal as approved by the State Board of Registration for Professional Engineers and Land Surveyors, or (ii) be a copy of a map, already on file in the public ~~record,~~ records, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors."

Section 11. G.S. 47-30(n) reads as rewritten:

"(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for ~~inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY."~~ recording in that form for illustrative purposes only if it meets both of the following requirements:

(1) It is no larger than 8 1/2 inches by 14 inches.

(2) It is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.""

Section 12. G.S. 47-30.2(c) reads as rewritten:

"(c) A map or plat must be presented to the Review Officer unless one or more of the following conditions are applicable:

(1) ~~the~~ The certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c.

(2) The map or plat is exempt from the requirements of G.S. 47-30 pursuant to G.S. 47-30(j) or (l).

(3) The map is an attachment that is being recorded pursuant to G.S. 47-30(n)."

Section 13. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 34.

"Certificates of Authentication.

"§ 66-270. Authority of Secretary of State to authenticate documents.

The Secretary, or the Secretary's designee, may sign and issue a certificate of authentication for a document that has been executed or issued in this State so that it can be recognized in a foreign jurisdiction. The certificate may be issued under the seal of the Department of the Secretary of State or under the Great Seal of the State of North Carolina. The Secretary may adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

"§ 66-271. Definitions.

The following definitions apply in this Article:

(1) Authentication. -- Certification of the genuineness of an official's signature, seal, or position within the State of North Carolina so the document can be recognized in a foreign jurisdiction.

(2) Department. -- The Department of the Secretary of State.

(3) Foreign jurisdiction. -- A jurisdiction outside the State of North Carolina.

(4) Foreign official. -- An individual authorized by a foreign jurisdiction to attest to the genuineness of a document or to the position of an individual within that foreign jurisdiction.

(5) Notary public. -- Defined in G.S. 10A-3.

(6) Official. -- An individual who is a notary public, an individual who is elected or appointed to hold an office in State government, or an individual who is elected or appointed to hold an office in a local governmental unit of this State.

(7) Secretary. -- The Secretary of State.

(8) Specimen. -- A record of a person's signature, seal, or position as an official within the State maintained in the Department.

"§ 66-272. Certificate of authentication.

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of

the official's seal and signature on file in the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication may be placed on the document itself, if space is available, or by appending it to the document on a separate sheet.

"**§ 66-273. Prerequisites for authentication.**

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.

(2) All dates must follow in chronological order on all certifications.

(3) All acknowledgments to be authenticated by the Secretary shall be in English or accompanied by a certified or notarized English translation.

(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

"**§ 66-274. Limitations on authentication.**

(a) The Secretary shall not issue a certificate of authentication for a document if the Secretary has cause to believe that the certificate is desired for an unlawful or improper purpose. The Secretary may examine not only the document for which a certificate is requested, but also any documents to which the previous seals or other certifications may have been affixed by other authorities. The Secretary may request any additional information that may be necessary to establish that the requested certificate will serve the interests of justice and is not contrary to public policy, including a certified or notarized English translation of document text in a foreign language.

(b) The Secretary shall not issue a certificate of authentication for any one or more of the following:

(1) A seal or signature that cannot be authenticated by either the Secretary or another official.

(2) A seal or signature of a foreign official.

(3) A facsimile, photostat, photographic or other reproduction of a signature or seal.

(c) The Secretary may not include within the certificate of authentication any statement that is not within the Secretary's power or knowledge to authenticate. The Secretary may not certify that a document has been executed or certified in accordance with the law of any particular jurisdiction or that a document is a valid document in a particular jurisdiction."

Section 14. Part 2 of Article 16 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-16-22.1. Curative provision.**

(a) A corporation that is delinquent in filing an annual report for any one or more of the years 1991 through 1997 may satisfy the annual report requirement and avoid administrative dissolution or revocation of its certificate of authority by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee for each delinquent annual report.

(b) A corporation that has been issued a certificate of administrative dissolution under G.S. 55-14-21 or a certificate of revocation of authority under G.S. 55-15-31 for failure to file an annual report for any one or more of the years 1991 through 1997 may be granted a certificate of reinstatement or a new certificate of authority by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee for each delinquent annual report.

(3) File an application for reinstatement or an application for a new certificate of authority, whichever is appropriate.

(4) Pay the filing fee for an application for reinstatement following administrative dissolution or the fee for an application of a certificate of authority, whichever is appropriate.

(5) Comply with G.S. 55-4-01.

The certificate of reinstatement and the certificate of authority, when it is effective, relates back to and takes effect as of the date of the administrative dissolution or of the certificate of revocation of authority. The corporation may resume carrying on its business as if the administrative dissolution or certificate of revocation of authority had never occurred, subject to the rights of any persons who reasonably relied to their prejudice upon the certificate of dissolution or the certificate of revocation of authority.

(c) The relief provided by this section shall not be available to a corporation that receives a certificate of dissolution or a certificate of authority revoked for a reason other than the failure to file an annual report under G.S. 55-14-20 or G.S. 55-15-30."

Section 15. Article 6 of Chapter x57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-6-03.1. Curative provision.**

(a) A limited liability company that is delinquent in filing an annual report for any one or more of the years 1993 through 1997 may satisfy the annual report requirement and avoid administrative dissolution by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee for each delinquent annual report.

(b) A limited liability company that has been issued a certificate of administrative dissolution under G.S. 57C-6-03 for failure to file an annual report for any one or more of the years 1993 through 1997 may be granted a certificate of reinstatement by completing all of the following on or before November 30, 1999:

(1) File a current annual report.

(2) Pay the annual report filing fee for each delinquent annual report.

(3) File an application for reinstatement.

(4) Pay the filing fee for an application for reinstatement following administrative dissolution.

(5) Comply with G.S. 57C-2-30.

The certificate of reinstatement, when it is effective, relates back to and takes effect as of the date of the administrative dissolution. The limited liability company may resume carrying on its business as if the administrative dissolution of authority had never occurred, subject to the rights of any persons who reasonably relied to their prejudice upon the certificate of dissolution.

(c) The relief provided by this section shall not be available to a limited liability company that receives a certificate of dissolution for a reason other than the failure to file an annual report under G.S. 57C-6-03."

Section 16. Sections 9, 14, and 15 of this act are effective when they become law. Sections 14 and 15 of this act are repealed December 1, 1999. Sections 10 and 11 of this act

become effective December 1, 1998. The remainder of this act becomes effective September 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 1552
Finance Committee Substitute Adopted 7/15/98
House Committee Substitute Favorable 8/5/98

Short Title: Notary Public Changes. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE NOTARY PUBLIC ACT, TO EXEMPT SOME MAPS FROM THE CERTIFICATION REQUIREMENT, AND TO AUTHORIZE THE SECRETARY OF STATE TO AUTHENTICATE DOCUMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-2 reads as rewritten:

"**§ 10A-2. Purposes.**

This Chapter shall be construed and applied to advance its underlying purposes, which are:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery."

Section 2. G.S. 10A-3 reads as rewritten:

"**§ 10A-3. Definitions.**

The following definitions apply in this Chapter:

(1) Acknowledgment. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily.

(2) Commission. -- The written authority to perform a notarial act.

(2a) Director. -- The Director of the Notary Section of the Department of the Secretary of State.

(3) Notarial act, notary act, and notarization. -- Any act that a notary is empowered to perform under G.S. 10A-9.

(4) Notary public and notary. -- A person commissioned to perform notarial acts under this Chapter.

(5) Oath or affirmation. -- A notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary, with reference made to a Supreme Being for an oath and with no reference made to a Supreme Being for an affirmation.

(6) Official misconduct. -- Either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary ~~of State~~ to be negligent or against the public interest.

(7) Personal knowledge of identity. -- Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(8) Satisfactory evidence of identity. -- Identification of an individual based on either of the following:

a. One current document issued by a federal or state government with the individual's photograph.

b. Identification by a credible person who is personally known to the notary and who has personal knowledge of the individual's identity.

(8a) Secretary. -- The Secretary of State.

(9) Verification or proof. -- A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has, in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document."

Section 3. G.S. 10A-4 reads as rewritten:

"**§ 10A-4. Commissioning.**

(a) Except as provided in subsection (c) of this section, the Secretary ~~of State~~ shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary ~~of State~~ and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary ~~of State~~ that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary ~~of State~~ and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. ~~The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.~~

(c) The Secretary ~~of State~~ may deny an application for commission or recommission as a notary if any of the following applies to the applicant:

(1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.

(1a) The applicant has been convicted of a felony and the applicant's rights have not been restored.

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.

(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the ~~Secretary of State.~~ Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the ~~Secretary of State.~~ Secretary.

(2) Have six months of active experience as a notary public.

(3) Maintain a current commission as a notary public.

(4) Purchase the current notary public guidebook.

(5) Pay a nonrefundable fee of fifty dollars ($50.00).

~~Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant and deputy clerks of court are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.~~ Certification to teach a course of study shall be effective for two years. A certification may be renewed by passing a recertification course taught by

the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars ($50.00).

(e) ~~Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of State.~~ The following people may be certified to teach a course of study required under subsection (b) of this section without meeting the requirements of subdivisions (d)(2), (d)(3), and (d)(5), and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

(1) Registers of deeds.
(2) Clerks of court.
(3) The Director."

Section 4. G.S. 10A-9(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.
(2) The readable appearance of the notary's name, either from the notary's signature or ~~otherwise.~~ from the notary's typed, printed, or embossed name near the signature.
(3) The clear and legible appearance of the notary's stamp or seal.
(4) A statement of the date the notary's commission expires."

Section 5. G.S. 10A-10 reads as rewritten:

"**§ 10A-10. Fees of notaries.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature.
(2) For oaths or affirmations without a verification or proof, ~~two dollars ($2.00)~~ three dollars ($3.00) per person.
(3) For verifications or proofs, ~~two dollars ($2.00)~~ three dollars ($3.00) per signature."

Section 6. G.S. 10A-11 reads as rewritten:

"**§ 10A-11. Notarial stamp or seal.**

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words "North Carolina" or an abbreviation thereof, and the words "Notary Public". The official stamp or seal, as it appears on a document, may contain a permanently imprinted or a handwritten expiration date of the notary's commission. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it. However, upon revocation,

the notary shall immediately surrender the stamp or seal to the ~~Secretary of State.~~ Secretary."

Section 7. G.S. 10A-14 reads as rewritten:

"**§ 10A-14.** ~~**Clerks are notaries ex officio and may certify own seals.**~~ **Notaries ex officio.**

(a) The clerks of the superior court ~~and their assistants and deputies~~ may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts under the seals of their respective courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts under the seals of their respective offices.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Office of the Secretary of State and may certify a notarial act performed in that capacity under the seal of the Secretary of State.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10A-10. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed."

Section 8. G.S. 10A-15 is repealed.

Section 9. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is ~~erroneously~~ stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "N. C.", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for ~~Georgia,~~ another state are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~June 1, 1997.~~ August 1, 1998."

Section 10. G.S. 47-30(m) reads as rewritten:

"(m) ~~Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor.~~ Maps attached to deeds or other instruments and submitted for recording in that form must be no larger than 8 1/2

inches by 14 inches and comply with either this subsection or subsection (n) of this section. Such a map shall either (i) have ~~an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors~~ the original signature of a registered land surveyor and the surveyor's seal as approved by the State Board of Registration for Professional Engineers and Land Surveyors, or (ii) be a copy of a map, already on file in the public ~~record,~~ records, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors."

Section 11. G.S. 47-30(n) reads as rewritten:

"(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for ~~inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY."~~ recording in that form for illustrative purposes only if it meets both of the following requirements:

(1) It is no larger than 8 1/2 inches by 14 inches.

(2) It is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.""

Section 12. G.S. 47-30.2(c) reads as rewritten:

"(c) A map or plat must be presented to the Review Officer unless one or more of the following conditions are applicable:

(1) ~~the~~ The certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c.

(2) The map or plat is exempt from the requirements of G.S. 47-30 pursuant to G.S. 47-30(j) or (l).

(3) The map is an attachment that is being recorded pursuant to G.S. 47-30(n)."

Section 13. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 34.

"Certificates of Authentication.

"§ 66-270. Authority of Secretary of State to authenticate documents.

The Secretary, or the Secretary's designee, may sign and issue a certificate of authentication for a document that has been executed or issued in this State so that it can be recognized in a foreign jurisdiction. The certificate may be issued under the seal of the Department of the Secretary of State or under the Great Seal of the State

of North Carolina. The Secretary may adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

"§ 66-271. Definitions.

The following definitions apply in this Article:

(1) Authentication. -- Certification of the genuineness of an official's signature, seal, or position within the State of North Carolina so the document can be recognized in a foreign jurisdiction.

(2) Department. -- The Department of the Secretary of State.

(3) Foreign jurisdiction. -- A jurisdiction outside the State of North Carolina.

(4) Foreign official. -- An individual authorized by a foreign jurisdiction to attest to the genuineness of a document or to the position of an individual within that foreign jurisdiction.

(5) Notary public. -- Defined in G.S. 10A-3.

(6) Official. -- An individual who is a notary public, an individual who is elected or appointed to hold an office in State government, or an individual who is elected or appointed to hold an office in a local governmental unit of this State.

(7) Secretary. -- The Secretary of State.

(8) Specimen. -- A record of a person's signature, seal, or position as an official within the State maintained in the Department.

"§ 66-272. Certificate of authentication.

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of the official's seal and signature on file in the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication may be placed on the document itself, if space is available, or by appending it to the document on a separate sheet.

"§ 66-273. Prerequisites for authentication.

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.

(2) All dates must follow in chronological order on all certifications.

(3) All acknowledgments to be authenticated by the Secretary shall be in English or accompanied by a certified or notarized English translation.

(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

"§ 66-274. Limitations on authentication.

(a) The Secretary shall not issue a certificate of authentication for a document if the Secretary has cause to believe that the certificate is desired for an unlawful or improper purpose. The Secretary may examine not only the document for which a certificate is requested, but also any documents to which the previous seals or other certifications may have been affixed by other authorities. The Secretary may request any additional information that may be necessary to establish that the requested certificate will serve the interests of justice and is not contrary to public policy, including a certified or notarized English translation of document text in a foreign language.

(b) The Secretary shall not issue a certificate of authentication for any one or more of the following:

(1) A seal or signature that cannot be authenticated by either the Secretary or another official.

(2) A seal or signature of a foreign official.

(3) A facsimile, photostat, photographic or other reproduction of a signature or seal.

(c) The Secretary may not include within the certificate of authentication any statement that is not within the Secretary's power or knowledge to authenticate. The Secretary may not certify that a document has been executed or certified in accordance with the law of any particular jurisdiction or that a document is a valid document in a particular jurisdiction."

Section 14. Section 9 of this act is effective when it becomes law. Sections 10 and 11 of this act become effective December 1, 1998. The remainder of this act becomes effective September 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1552

SHORT TITLE: Changes to the Notary Public Act

SPONSOR(S): Senator Kerr

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	$2,900	$3,050	$3,200	$3,350	$3,500
EXPENDITURES					

POSITIONS: NA

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State

EFFECTIVE DATE: July 1, 1998

BILL SUMMARY:

Amends G.S. 10A-2 to specify that one of the chapter's purposes is to prevent fraud and forgery. Amends G.S. 10A-4 to require payment of a $50 fee to be certified to teach a course of study for notaries public, and to renew certification. Adds director and employees of the Notary Division of the Department of the Secretary of State to existing exemption from certain instructor certification requirements. Amends G.S. 10A-15 to permit director and employees of the Notary Division to act as notaries public by virtue of their employment by the Secretary of State, and to allow them to certify their notarial acts under the Secretary of State's seal. Amends G.S. 10A-4 (c) to specify that the Secretary of State may deny an application for commission or recommission as a notary if applicant has been convicted of a felony. Amends G.S. 10A-11 to add to and clarify specifications for notary seals. Amends G.S. 10A-16 to validate various notarial acts performed before October 1, 1998, and to clarify and add to the acts that are covered by the validation.

ASSUMPTIONS AND METHODOLOGY:
The number of initial certifications to teach a course of study for notaries public and the certification renewals to teach the courses are represented below by the single figures for the 1993-94 through the 1997-98 (projected) fiscal years:

1993-94	1994-95	1995-96	1996-97	1997-98 (est.)
43	47	50	52	55

Senate Bill 1552 authorizes the Secretary of State to charge a $50 fee for each initial certification and renewal to teach a course of study for notaries public. Relying on the experience from 1993-94 to 1996-97, we estimate an average annual increase of 3 individuals to the total number of individuals receiving initial certification and/or certification renewal. The following numbers (by fiscal year) represent the projected number of certifications and renewals in the out years:

1998-99	1999-00	2000-01	2001-02	2002-03
58	61	64	67	70

We simply multiply the projected numbers of initial certificates and renewals (above) times the $50 fee (authorized by the bill) to get the revenue projections by fiscal year reflected in the **FISCAL IMPACT** section of this note.

TECHNICAL CONSIDERATIONS:
None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Dwayne Pinkney
APPROVED BY:
DATE: June 16, 1998

AM

VISITOR REGISTRATION SHEET

Horse Pasture — 8-25-98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
David Work	NC Pharmacy Board
Alan Miles	Bailey & Dixon LLP
Zee B. Lamb	Lt. Gov.
Ruth Sappie	NCDOT
V M Beide	~~NCDA~~
Leanne Winner	NCSBA
Karl Gipson	OSBM
Ann Case	NCRMA
Andy Ellen	NCRMA
Ned Allen	NC Prof. Bd
Barbara Hire	NC Bd of Refrigeration
Meredith Morris	Lawrence Bewley & Assoc.

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
LYMAN COOPER	CSX CORP.
BILL SCOGGIN	NC BAR ASSOC.
Alice Garland	ElectriCities
RW Broughton	NC St Board of CPA Examiners
SAM JOHNSON	ATTY
Jim Fotis	NCAFI
Henry Jones	Atty. Raleigh
Andy Romanet	N.C. League of Municipalities
Patrice Roesler	NCACC
Ann Belcher	SBE
Bobby Byrd	RRC
John T Bowditch	Zeb Alley P.A.
Tommy Saunders	Saunders Co's

VISITOR REGISTRATION SHEET

Horse Pasture — 8-25-98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
George Reed	Christian Life Council
Sheila Pope	Sec. of State
Layk Holton	Sec. of State
Charlene L. Hawkins	Sec of State
Shannon Bullock	GHSP
Anne Jo Bain	Smith Anderson
Hoyt Kaplan	
Mike Obuchowski	NC State AFL-CIO
Avery McGregor	
Wes Barbee	GHSP / Lt. Governor
Joy Hawkins	DMV Enforcement
Cindy Adkins	Good Neighbors

VISITOR REGISTRATION SHEET

Horse Racing — 8-25-98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Alicia Gregory	Poyner & Spruill
Judy Dodge	WCSR
Hal Miller	NEACCT
Jon Mclean	Mesrs. Van Allen
Jim Dutt	
Jane Gray	DOJ
Gwynne Rowe	Lessee Co Regsta of Deeds
John Kunkel	Clerk of Superior Court
Tom Ledbetter	AJC
David Ferrell	Hoyle, McManus, Caldwell, Ard
David Simmons	ZPS, PA
Hilleth Tilson	NCHA

2:40 PM

VISITOR REGISTRATION SHEET

House Finance — 8/25/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Winner	NCSBA
Ruth Salpine	NCDOT
Eddie Caldwell	H, Mc, C, C+C, P.A
David Ferrell	"
Tommy Hamb	Hamb Cos.
George Reed	Christian Life Council
David Simmons	ZDA, PA
~~[illegible]~~ Michael Shaw	NCAFCU
Avery McGraw	
Wes Parker	GHSP/Lt. Governor
VL McBride	NAPO
R. Paul Wilms	NCMBA

VISITOR REGISTRATION SHEET

Horse Power

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS

VISITOR REGISTRATION SHEET

PM

Horse Pasture — 8/25/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Zee Lamb	Lt. Gov.
Crissy Parker	Bone & Associates.
Jan Cotts	VCASA
Tom Andrews	AOC
Joy Martin	DMV Enforcement
Ann Belcher	SBE
Jan Gray	DOJ
B. J. Scarbro	Good Neighbors

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, AUGUST 19, 1998

8:30 A.M. AND AFTER SESSION

ROOM 544-LOB

The House Committee on Finance met on Wednesday, August 19, 1998, at 8:30 a.m. and after session in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Rep. Gray called the meeting to order.

HB-1402 DISAPPROVE NEUSE RIVER BASIN RULE

Rep. Dickson moved for adoption of the proposed committee substitute for discussion. So moved. Rep. Creech explained the bill. Mr. George Givens, Research Division, gave a detailed explanation. Mr. Tom Bean, Executive Director, Wildlife Federation, addressed members in favor of the bill. Rep. Gray asked him if he represented the conservationist and he replied he did. Mr. Bill Holman, Department of Environment Resources addressed members in support of the bill.

Rep. Dickson sent forth a technical amendment. Mr. Givens explained. The vote was taken and the amendment was adopted.

Rep. Hensley spoke in favor of the bill and moved for a favorable report, unfavorable to the original bill. Rep. Womble asked where this bill generated and if it complies with the Federal Clean Water Act. Rep. Creech and Mr. Givens responded. Rep. Womble asked Mr. Holman if this was as strict as current legislation and he replied. Rep. Womble spoke again in support of the bill. Rep. Dickson asked for clarification of language and Mr. Givens clarified. Rep. Brown had questions of Mr. Holman. Rep. Brawley asked if this affected the Catawba River in his district. Mr. Holman answered. Rep. Cunningham questioned the fees and how they will be administered. Mr. Givens responded. Rep. Capps asked about ditch buffers. Rep. Creech answered. Rep. Hackney asked Mr. Holman if DOT would adhere to this and he replied. Rep. Baddour questioned the delegating authority of the Board and Mr. Holman answered.

The vote was taken on the bill was given a favorable report, unfavorable to the original bill.

Chairman Gray made a presentation to all staff members and presented them with a plaque and words of appreciation for all they have done for this Committee.

SB-1291 TRANSPORTATION CORRIDORS

Sen. Gulley explained the bill. Rep. Wilson moved for a favorable report. Rep. Hackney questioned the way of notifying citizens and Sen. Gulley responded. Rep. Hightower questioned the sponsor and he answered.

Rep. C. Wilson sent forth an amendment, explained, and urged adoption. Sen. Gulley supports the amendment. Rep. Hackney was concerned and Sen. Gulley responded to his concerns. Ms. Ruth Sappee, Department of Transportation, addressed members. The vote was taken and the amendment was adopted.

Rep. Decker asked about limits on bikeways and greenways. Ms. Sappee explained. Rep. Brawley spoke in favor of the bill. Rep. Decker questioned the tax abatement for his district. Sen. Gulley responded and asked that Mr. Calvin Leggett, DOT made additional comments. Mr. Leggett addressed the question. Rep. Goodwin had a series of questions of the sponsor and he responded. Mr. Leggett again made additional comments and explanations. Rep. Womble requested clarification of some of the discussion and Sen. Gulley explained.

Rep. Decker sent forth an amendment. Chairman Gray read and Rep. Decker explained. Rep. Rayfield asked about easements and Mr. Leggett explained. Staff advised that the General Statutes needed to be checked for this amendment and Chairman Gray announced the amendment would be removed until this could be verified so the committee could proceed on with this bill. He advised that the amendment could be offered when it was on the House floor.

Rep. Miller had questions for Sen. Gulley regarding the Regional Transportation Authority and their funding. Sen. Gulley answered.

The vote was taken on the bill and passed with a favorable report, unfavorable to the original bill.

SB-916 COSMETOLOGIST

Rep. Wilson moved for adoption of the proposed committee substitute for discussion. So moved. Sen. Kerr explained his portion of the committee substitute. Rep. Clary explained her portion of the committee substitute. Rep. Jarrell asked about the education necessary. Sen. Kerr and Rep. Clary both answered. Rep. Dickson moved for a favorable report, unfavorable to the original bill. Rep. Hightower asked why these were combined into one bill. Both

sponsors responded. He then asked which community colleges offered these classes. Mr. Rick Rossen, Co-Director of the Body Institute, Chatham County, responded. Rep. Hightower then asked if there was opposition. Rep. Clary responded. Mr. William Potter, NC Physical Therapist Association addressed members. Rep. Clary responded to his comments. Rep. Ramsey questioned a section of the bill regarding per diem and mileage. Ms. Martha Walston, Fiscal Research Division, responded. Rep. Ramsey asked for an amendment to be prepared regarding that provision. Rep. Cunningham was concerned about the exams given by the community colleges and what languages it was offered in.

Chairman Gray had announced they had the room reserved until noon, but members wanted to continue with discussion after session. It was announced they would return 15 minutes after session. The meeting adjourned at 10:50 a.m.

Chairman C. Wilson called the meeting back to order at 3:45 p.m. in Room 544. Discussion continued with Rep. Cunningham requesting an amendment for exams to be given in different languages. Rep. Clary spoke on his comments.

Rep. Ramsey sent forth an amendment and explained it. After staff explained, he withdrew his amendment.

Rep. Womble questioned Rep. Clary and she deferred to Mr. Rick Rossen.

Rep. Decker sent forth an amendment. Ms. Walston explained. Rep. Hightower requested more clarification. Sen. Kerr responded to the amendment. Rep. Decker spoke again on his amendment. Rep. Miller questioned Sen. Kerr and he responded. Rep. Beall questioned this affecting acupuncture and Sen. Kerr answered. Rep. Hightower had additional questions to which Mr. Gerry Cohen, Director of Bill Drafting responded regarding body piercing. After the discussion, Rep. Decker withdrew his amendment.

Rep. Miller spoke on the bill. He questioned this complying with our House rules for this session. Chairman Wilson responded to his inquiry. Rep. Jarrell had questions for Sen. Kerr which he answered.

Rep. Cunningham sent forth an amendment and Ms. Walston read and explained. Rep. Cunninaham also explained. Rep. Brawley spoke against the amendment. Rep. McComas spoke against the amendment. Rep. Goodwin spoke against the amendment. Rep. Cunningham spoke again on his amendment. Rep. Goodwin spoke a second time. Rep. Hightower questioned the grandfather clause. Ms. Walston responded. Rep. Dickson spoke on the amendment. Rep. Cunningham then withdrew his amendment.

Rep. Miller sent forth an amendment. Mr. Cohen read and Rep. Miller explained. Mr. Keith Bauchard, Health Ecology, addressed members at the request of Rep. Miller. Rep. Clary responded to his comments. Mr. Ed Sandsberry, Massage Therapist, addressed members. Rep. Clary spoke again. Mr. William Potter, lobbyist for NCPTA spoke to members. Rep. Hackney spoke in favor of this amendment. Rep. Jarrell opposed the amendment. Rep. Dickson spoke in opposition of the amendment. The vote was taken and the amendment failed.

Rep. Howard sent forth an amendment. Ms. Cindy Avrette, Research Division read and explained. Rep. Howard spoke on her amendment. Mr. Jim Blackburn, County Commissioners Association addressed members and spoke on the amendment in support. Rep. Howard urged support. Sen. Kerr was opposed to the amendment. Rep. Howard withdrew her amendment.

Having no more discussion, the vote was taken on the bill and given a favorable report, unfavorable to the original bill.

The meeting adjourned at 4:55 p.m.

Rep. Gray, Chairman

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

WEDNESDAY, AUGUST 19, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Gray

BILLS FOR DISCUSSION:

HB-1402 Disapprove Neuse River Basin Rule	Rep. Creech
~~SB-916~~ Cosmetologists	Sen. Kerr
SB-1291 Transportation Corridors	Sen. Gulley

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1402
Committee Substitute Favorable 8/12/98
Proposed Committee Substitute H1402-PCS2416-RT007

Short Title: Disapprove/Revise Neuse River Basin Rule. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE 15A NCAC 2B.0233 (THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY) AS A PERMANENT RULE, TO CONTINUE 15A NCAC 2B.0233 IN EFFECT AS A TEMPORARY RULE, TO SPECIFY HOW THE TEMPORARY RULE IS TO BE IMPLEMENTED, TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION (EMC) TO ADOPT RULES TO PROVIDE ALTERNATIVES TO MAINTAINING RIPARIAN BUFFERS AND TO ESTABLISH COMPENSATORY MITIGATION FEES, TO ESTABLISH THE RIPARIAN BUFFER RESTORATION FUND, TO REQUIRE THE EMC TO ADOPT RULES TO PROVIDE FOR DELEGATION OF THE RIPARIAN BUFFER PROGRAM TO UNITS OF LOCAL GOVERNMENT THAT SEEK SUCH DELEGATION, TO RECOGNIZE VESTED DEVELOPMENT RIGHTS, TO REQUIRE THE EMC TO REVISE THE TEMPORARY RULE CONTINUED IN EFFECT BY THIS ACT AND TO ADOPT A REVISED PERMANENT RULE WITH THE ASSISTANCE OF A STAKEHOLDER ADVISORY COMMITTEE, TO PROVIDE THAT EROSION CONTROL PLANS WILL BE CONSISTENT WITH RIPARIAN BUFFER REQUIREMENTS, TO REQUIRE THE EMC TO ESTABLISH A RIPARIAN BUFFER MAINTENANCE AND RESTORATION GOAL, TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ACCEPT DONATIONS OF REAL PROPERTY, TO PROVIDE FOR PERIODIC REVIEW OF THE IMPLEMENTATION OF

THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY AND REPORTS TO THE ENVIRONMENTAL REVIEW COMMISSION, AND TO AUTHORIZE THE EMC TO ADOPT TEMPORARY RULES TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

Section 1. **Definitions.** -- Unless otherwise required by the context, the following definitions apply throughout this act:

(1) "Commission" means the Environmental Management Commission.

(2) "Department" means the Department of Environment and Natural Resources.

(3) "Secretary" means the Secretary of Environment and Natural Resources.

(4) "Temporary rule 15A NCAC 2B.0233" means 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), adopted as a temporary rule by the Commission effective 22 July 1997, amended by the Commission effective 22 April 1998, and continued in effect by Section 2 of this act.

Section 2. **Permanent rule disapproved; temporary rule continued in effect.** -- Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission and approved by the Rules Review Commission on 19 February 1998, is disapproved as a permanent rule. Notwithstanding G.S. 150B-21.1(d), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission effective 22 April 1998, shall remain in effect as a temporary rule until the revised temporary rule required by Section 8 of this act becomes effective. The Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in Section 3 of this act.

Section 3. **Implementation of the temporary rule: determination of surface waters; requirements not applicable to certain intermittent streams; forest vegetation defined.** -- (a) Until the effective date of the revised temporary rule that the Commission is required to adopt by Section 8 of this act, the Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in this section.

(b) For purposes of implementing temporary rule 15A NCAC 2B.0233, the presence of surface waters in the Neuse River Basin, including intermittent streams, perennial streams, lakes, ponds, and estuaries shall be determined solely as provided in this subsection and subsection (c) of this section. Surface water is presumed to be present on a particular parcel or tract of land if surface water appears on either the most recent versions of the soil survey maps prepared by the Natural

Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geological Survey (USGS).

(c) The General Assembly recognizes that the soil survey maps and the USGS topographic maps may be in error in that these maps may indicate the presence of surface water where no surface water is actually present and may fail to indicate the presence of surface water where surface water is actually present. Any question as to the accuracy or application of the maps to a particular parcel or tract of land shall be referred to the Director of the Division of Water Quality of the Department. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of Chapter 150B of the General Statutes. The Commission shall make the final agency decision in a contested case involving a determination under this section. A determination of the presence of surface waters pursuant to this section applies only to the implementation of temporary rule 15A NCAC 2B.0233.

(d) As used in temporary rule 15A NCAC 2B.0233, "forest vegetation" is not defined by 15A NCAC 2B.0202 but instead means vegetation consisting of trees and woody perennial plants with associated herbaceous vegetation in conjunction with a defined surface layer consisting of leaves, branches, and other plant material. "Forest vegetation" includes mature and successional forest areas and cutover areas.

Section 4. **Alternatives to maintaining riparian buffers; compensatory mitigation fees.** -- (a) The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain existing riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with the requirements of the revised temporary rule and permanent rule required by Section 8 of this act. Alternatives shall include, but are not limited to:

(1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund.

(2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property is either:

a. A riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost; or

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost.

(3) Establishment, restoration, or enhancement of a riparian buffer that is not otherwise required to be protected.

(b) Compensatory mitigation is only available for loss of a riparian buffer along an intermittent stream. Compensatory mitigation shall be conducted within the Neuse River Basin.

(c) The Commission shall establish a standard schedule of compensatory mitigation fees. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality by:

(1) Restoring existing riparian buffers.

(2) Acquiring land for and creation of new riparian buffers.

(3) Monitoring and maintaining the restored or created riparian buffers over time.

(d) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

Section 5. **Riparian Buffer Restoration Fund.** -- (a) G.S. 143-214.15 through G.S. 143-214.20 are reserved for future codification purposes.

(b) Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.21. Riparian Buffer Protection Program; Riparian Buffer Restoration Fund.**

The Riparian Buffer Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Riparian Buffer Restoration Fund shall provide a repository for monetary contributions to promote projects for the restoration, enhancement, or creation of riparian buffers and for compensatory mitigation fees paid to the Department. The Fund shall be administered by the Division of Water Quality within the Department. Monies shall be expended from the Fund only for those purposes directly related to the restoration, acquisition, creation, enhancement, and maintenance of riparian buffers to offset the benefits to water quality, including the removal of nutrients, lost through the loss of buffers. Compensatory mitigation fees paid into the Fund in connection with the loss of riparian buffers in a river basin and the interest earned on those fees may be used only for projects in that river basin."

Section 6. **Delegation of riparian buffer protection requirements to local governments.** -- (a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements in the Neuse River Basin to units of local government that have the

power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government in the Neuse River Basin that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a delegation unless the Commission finds that local implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that any unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Division of Water Quality in the Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

Section 7. **Recognition of vested development rights.** -- (a) Vested rights recognized or established under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 shall include the right as provided in this section, to undertake and complete development in the Neuse River Basin without application of temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 8 of this act. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 8 of this act to development with vested rights recognized or established under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to 22 July 1997. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 8 of this act to

(7) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
(8) The Director of the Water Resources Research Institute of The University of North Carolina or the Director's designee.
(9) The Chair of the Upper Neuse River Basin Association or the Chair's designee.
(10) The President of the Lower Neuse River Basin Association or the President's designee.
(11) The President of the North Carolina Association of Environmental Professionals or the President's designee.
(12) The President of the North Carolina Chapter of the American Planning Association or the President's designee.
(13) The Executive Director of the North Carolina Aggregates Association, Inc., or the Executive Director's designee.
(14) The President of North Carolina Citizens for Business and Industry or the President's designee.
(15) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
(16) The Executive Vice-President of the North Carolina Forestry Association, Inc., or the Executive Vice-President's designee.
(17) The Executive Vice-President of the North Carolina Home Builders Association, Inc., or the Executive Vice-President's designee.
(18) A commercial land developer appointed by the Secretary.
(19) The President of the Conservation Council of North Carolina, Inc., or the President's designee.
(20) The Director of the North Carolina Environmental Defense Fund or the Director's designee.
(21) The President of the Neuse River Foundation, Inc., or the President's designee.
(22) The Chair of the North Carolina Chapter of the Sierra Club or the Chair's designee.
(23) The President of the North Carolina Wildlife Federation, Inc., or the President's designee.

(b) The Director of the Division of Water Quality of the Department shall assign appropriate professional and clerical staff to assist the Stakeholder Advisory Committee in the performance of its duties under this act.

(c) The Stakeholder Advisory Committee created by this section shall terminate when it makes its final recommendations to the Commission.

Section 11. **Erosion control plans consistent with riparian buffer requirements.** -- (a) G.S. 113A-54.1(c) reads as rewritten:

"(c) The Director of the Division of Land Resources shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers

along surface waters. The Director of the Division of Land Resources may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

(b) G.S. 113A-61(b1) reads as rewritten:

"(b1) A local government shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

Section 12. **Temporary rules authorized.** -- (a) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Commission may adopt temporary rules to implement this act and to correct other rules related to the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy until 1 July 1999. It is the intention of the General Assembly that the Commission first address the revisions to temporary rule 15A NCAC 2B.0233 required by subdivision (1) of subsection (a) of Section 8 of this act and that the Commission adopt all temporary rules required by or necessary to implement this act no later than 15 February 1999.

(b) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Sedimentation Control Commission may adopt temporary rules to implement Section 11 of this act until 1 July 1999. It is the intention of the General Assembly that the Sedimentation Control Commission adopt any temporary rules that may be necessary to implement Section 11 of this act no later than 15 February 1999. If the Sedimentation Control Commission determines that adoption of a temporary rule is necessary to implement Section 11 of this act, the Sedimentation Control Commission shall proceed, in accordance with Article 2A of Chapter 150B of the General Statutes, with the adoption of a permanent rule to replace the temporary rule. The Sedimentation Control Commission shall require local erosion control programs approved under G.S. 113A-60 to implement the requirements of G.S. 113A-61(b1), as amended by Section 11 of this act.

Section 13. **Department may accept donations of real property.** -- The Department may accept donations of real property and interests in real property if the real property or interest in real property is a riparian buffer or will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality.

Section 14. **Commission to establish riparian buffer maintenance and restoration goal.** -- The Commission shall establish a goal for the maintenance and restoration of riparian buffers that is consistent with the thirty percent (30%) nitrogen reduction goal for the Neuse River estuary established by Chapter 572 of the 1995 Session Laws (1996 Regular Session).

Section 15. **Report on implementation of act to the Environmental Review Commission.** -- The Commission and the Department shall jointly report to the Environmental Review Commission on progress in implementing this act on or before 1 December 1998 and 1 March 1999. The reports shall include any proposed legislation that the Commission or the Department recommends as necessary or desirable to achieve the purposes of this act, to improve water quality in the Neuse River or the Neuse estuary, or to better achieve the purposes of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy.

Section 16. **Repeal of unnecessary reporting requirement.** -- Section 3 of Chapter 572 of the 1995 Session Laws (1996 Regular Session) is repealed.

Section 17. **Headings for convenience only.** -- The headings to the sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 18. **Severability provision.** -- If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 19. **Effective date of act.** -- This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1402
Committee Substitute Favorable 8/12/98

Short Title: Disapprove/Revise Neuse River Basin Rule. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE 15A NCAC 2B.0233 (THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY) AS A PERMANENT RULE, TO CONTINUE 15A NCAC 2B.0233 IN EFFECT AS A TEMPORARY RULE, TO SPECIFY HOW THE TEMPORARY RULE IS TO BE IMPLEMENTED, TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION (EMC) TO ADOPT RULES TO PROVIDE ALTERNATIVES TO MAINTAINING RIPARIAN BUFFERS AND TO ESTABLISH COMPENSATORY MITIGATION FEES, TO ESTABLISH THE RIPARIAN BUFFER RESTORATION FUND, TO REQUIRE THE EMC TO ADOPT RULES TO PROVIDE FOR DELEGATION OF THE RIPARIAN BUFFER PROGRAM TO UNITS OF LOCAL GOVERNMENT THAT SEEK SUCH DELEGATION, TO RECOGNIZE VESTED DEVELOPMENT RIGHTS, TO REQUIRE THE EMC TO REVISE THE TEMPORARY RULE CONTINUED IN EFFECT BY THIS ACT AND TO ADOPT A REVISED PERMANENT RULE WITH THE ASSISTANCE OF A STAKEHOLDER ADVISORY COMMITTEE, TO PROVIDE THAT EROSION CONTROL PLANS WILL BE CONSISTENT WITH RIPARIAN BUFFER REQUIREMENTS, TO REQUIRE THE EMC TO ESTABLISH A RIPARIAN BUFFER MAINTENANCE AND RESTORATION GOAL, TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ACCEPT DONATIONS OF REAL PROPERTY, TO PROVIDE FOR PERIODIC REVIEW OF THE IMPLEMENTATION OF THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT

STRATEGY AND REPORTS TO THE ENVIRONMENTAL REVIEW COMMISSION, AND TO AUTHORIZE THE EMC TO ADOPT TEMPORARY RULES TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

Section 1. **Definitions.** -- Unless otherwise required by the context, the following definitions apply throughout this act:

(1) "Commission" means the Environmental Management Commission.

(2) "Department" means the Department of Environment and Natural Resources.

(3) "Secretary" means the Secretary of Environment and Natural Resources.

(4) "Temporary rule 15A NCAC 2B.0233" means 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), adopted as a temporary rule by the Commission effective 22 July 1997, amended by the Commission effective 22 April 1998, and continued in effect by Section 2 of this act.

Section 2. **Permanent rule disapproved; temporary rule continued in effect.** -- Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission and approved by the Rules Review Commission on 19 February 1998, is disapproved as a permanent rule. Notwithstanding G.S. 150B-21.1(d), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission effective 22 April 1998, shall remain in effect as a temporary rule until the revised temporary rule required by Section 8 of this act becomes effective. The Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in Section 3 of this act.

Section 3. **Implementation of the temporary rule: determination of surface waters; requirements not applicable to certain intermittent streams; forest vegetation defined.** -- (a) Until the effective date of the revised temporary rule that the Commission is required to adopt by Section 8 of this act, the Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in this section.

(b) For purposes of implementing temporary rule 15A NCAC 2B.0233, the presence of surface waters in the Neuse River Basin, including intermittent streams, perennial streams, lakes, ponds, and estuaries shall be determined solely as provided in this subsection and subsection (c) of this section. Surface water is presumed to be present on a particular parcel or tract of land if surface water appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or

the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geological Survey (USGS).

(c) The General Assembly recognizes that the soil survey maps and the USGS topographic maps may be in error in that these maps may indicate the presence of surface water where no surface water is actually present and may fail to indicate the presence of surface water where surface water is actually present. Any question as to the accuracy or application of the maps to a particular parcel or tract of land shall be referred to the Director of the Division of Water Quality of the Department. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of Chapter 150B of the General Statutes. The Commission shall make the final agency decision in a contested case involving a determination under this section. A determination of the presence of surface waters pursuant to this section applies only to the implementation of temporary rule 15A NCAC 2B.0233.

(d) The requirements of temporary rule 15A NCAC 2B.0233 shall not apply to a segment of an intermittent stream that drains an area of 25 acres or less and that lies upstream from the point of measurement from which the drainage area is determined.

(e) As used in temporary rule 15A NCAC 2B.0233, "forest vegetation" is not defined by 15A NCAC 2B.0202 but instead means vegetation consisting of trees and woody perennial plants with associated herbaceous vegetation in conjunction with a defined surface layer consisting of leaves, branches, and other plant material. "Forest vegetation" includes mature and successional forest areas and cutover areas.

Section 4. **Alternatives to maintaining riparian buffers; compensatory mitigation fees.** -- (a) The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain existing riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with the requirements of and the revised temporary rule and permanent rule required by Section 8 of this act. Alternatives shall include, but are not limited to:

(1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund.

(2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property is either:

a. A riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost; or

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost.

(3) Establishment, restoration, or enhancement of a riparian buffer that is not otherwise required to be protected.

(b) Compensatory mitigation is only available for loss of a riparian buffer along an intermittent stream. Compensatory mitigation shall be conducted within the Neuse River Basin.

(c) The Commission shall establish a standard schedule of compensatory mitigation fees. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality by:

(1) Restoring existing riparian buffers.

(2) Acquiring land for and creation of new riparian buffers.

(3) Monitoring and maintaining the restored or created riparian buffers over time.

(d) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

Section 5. **Riparian Buffer Restoration Fund.** -- (a) G.S. 143-214.15 through G.S. 143-214.20 are reserved for future codification purposes.

(b) Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.21. Riparian Buffer Protection Program: Riparian Buffer Restoration Fund.**

The Riparian Buffer Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Riparian Buffer Restoration Fund shall provide a repository for monetary contributions to promote projects for the restoration, enhancement, or creation of riparian buffers and for compensatory mitigation fees paid to the Department. The Fund shall be administered by the Division of Water Quality within the Department. Monies shall be expended from the Fund only for those purposes directly related to the restoration, acquisition, creation, enhancement, and maintenance of riparian buffers to offset the benefits to water quality, including the removal of nutrients, lost through the loss of buffers. Compensatory mitigation fees paid into the Fund in connection with the loss of riparian buffers in a river basin and the interest earned on those fees may be used only for projects in that river basin."

Section 6. **Delegation of riparian buffer protection requirements to local governments.** -- (a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements in the Neuse River Basin to units of local government that have the power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government in the Neuse River Basin that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a delegation unless the Commission finds that local implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that any unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Division of Water Quality in the Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

Section 7. **Recognition of vested development rights.** -- Vested rights recognized or established under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 shall include the right as provided in this section, to undertake and complete development in the Neuse River Basin without application of temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 8 of this act. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by

Section 8 of this act to development with vested rights recognized or established under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to 22 July 1997. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 8 of this act to development with vested rights recognized or established under the common law prior to the date this act becomes effective if the Commission has issued a certification pursuant to G.S. 143B-282(a)(1)u. prior to 22 July 1997.

Section 8. **Revision of temporary rule 15A NCAC 2B.0233; adoption of a permanent rule to replace the temporary rule.** -- (a) The Commission shall revise temporary rule 15A NCAC 2B.0233 in accordance with this section. The Commission shall:

(1) Establish a method for determining the presence of surface waters on a particular parcel or tract of land in the Neuse River Basin. The Commission shall establish a method that is scientifically valid, easily understandable, efficient, consistent, reliable, and cost-effective, including a method for resolving disputes regarding the presence of surface waters on any particular parcel or tract of land.

(2) Establish methods to determine the point from which to measure the landward extent of zones within a protected riparian buffer appropriate to the different regions of the Neuse River Basin.

(3) Determine, based on drainage area, those segments of intermittent streams to which the riparian buffer protection requirements do not apply. The Commission may establish different drainage areas for segments of intermittent streams located in different parts of the Neuse River Basin on the basis of topography and other relevant factors.

(4) Define forest vegetation.

(5) Establish a clearly defined set of exemptions and uses that will be allowed within a riparian area.

(6) Establish criteria to determine whether there exists a practical alternative to the loss of the riparian buffer.

(b) All provisions that the Commission finds to be necessary to revise temporary rule 15A NCAC 2B.0233 and to implement the revised temporary rule shall be set out in the revised temporary rule. The Commission and the Department may develop and use guidance documents and other statements that concern only the internal management of the Commission and the Department. Neither the Commission nor the Department may develop or use any guidance document or other statement that directly or substantially affects the procedural or substantive rights or duties of any person not employed by the Commission or the Department unless those documents are set out in rules adopted in accordance with the provisions of Article 2A of Chapter 150B of the General Statutes.

(c) The Commission shall develop revisions to temporary rule 15A NCAC 2B.0233 with the assistance and advice of the Stakeholder Advisory

Committee appointed for that purpose as provided in Section 10 of this act. Notwithstanding G.S. 150B-21.1(d), the revised temporary rule shall not expire until the permanent rule required by subsection (d) of this section becomes effective.

(d) Once temporary rule 15A NCAC 2B.0233 has been revised as required by this section, the Commission shall proceed, in accordance with Article 2A of Chapter 150B of the General Statutes, with the adoption of a permanent rule to replace the revised temporary rule.

Section 9. **Commission to review the implementation of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy.** -- The Commission shall review the implementation of the Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy. As a part of this review, the Commission shall assess progress toward implementation of the Management Strategy, achievement of the nitrogen reduction goal established by Chapter 572 of the 1995 Session Laws (1996 Regular Session) and any other milestones related to the effort to improve water quality in the Neuse River and Neuse estuary established by the Commission, and the impact of the implementation of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy on the regulated community. The Commission shall report the results of this review, including any recommendations relative to water quality in the Neuse River and Neuse estuary, to the Environmental Review Commission no later than 1 December 2000. The Commission shall conduct a second review and report the results, including any recommendations, to the Environmental Review Commission no later than 1 December 2001.

Section 10. **Stakeholder Advisory Committee.** -- (a) The Commission shall develop the rules required by Sections 4 and 6 of this act and the revisions to temporary rule 15A NCAC 2B.0233 and the permanent rule required by Section 8 of this act with the assistance of a Stakeholder Advisory Committee. The Stakeholder Advisory Committee shall consist of 23 members as follows:

(1) A member of the public at large who shall serve as Chair of the Stakeholder Advisory Committee, appointed by the Secretary.

(2) A member of the Environmental Management Commission, appointed by the Chair of the Commission.

(3) The Director of the Division of Water Quality or the Director's designee.

(4) The Chief, Regulatory Branch, Wilmington District, United States Army Corps of Engineers or the Chief's designee, if the Wilmington District office agrees to make an appointment.

(5) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.

(6) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.

(7) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.

(8) The Director of the Water Resources Research Institute of The University of North Carolina or the Director's designee.

(9) The Chair of the Upper Neuse River Basin Association or the Chair's designee.
(10) The President of the Lower Neuse River Basin Association or the President's designee.
(11) The President of the North Carolina Association of Environmental Professionals or the President's designee.
(12) The President of the North Carolina Chapter of the American Planning Association or the President's designee.
(13) The Executive Director of the North Carolina Aggregates Association, Inc., or the Executive Director's designee.
(14) The President of North Carolina Citizens for Business and Industry or the President's designee.
(15) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
(16) The Executive Vice-President of the North Carolina Forestry Association, Inc., or the Executive Vice-President's designee.
(17) The Executive Vice-President of the North Carolina Home Builders Association, Inc., or the Executive Vice-President's designee.
(18) A commercial land developer appointed by the Secretary.
(19) The President of the Conservation Council of North Carolina, Inc., or the President's designee.
(20) The Director of the North Carolina Environmental Defense Fund or the Director's designee.
(21) The President of the Neuse River Foundation, Inc., or the President's designee.
(22) The Chair of the North Carolina Chapter of the Sierra Club or the Chair's designee.
(23) The President of the North Carolina Wildlife Federation, Inc., or the President's designee.

(b) The Director of the Division of Water Quality of the Department shall assign appropriate professional and clerical staff to assist the Stakeholder Advisory Committee in the performance of its duties under this act.

(c) The Stakeholder Advisory Committee created by this section shall terminate when it makes its final recommendations to the Commission.

Section 11. **Erosion control plans consistent with riparian buffer requirements.** -- (a) G.S. 113A-54.1(c) reads as rewritten:

"(c) The Director of the Division of Land Resources shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Director of the Division of Land Resources may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;
(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

(b) G.S. 113A-61(b1) reads as rewritten:

"(b1) A local government shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:
(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;
(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

Section 12. **Temporary rules authorized.** -- (a) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Commission may adopt temporary rules to implement this act and to correct other rules related to the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy until 1 July 1999. It is the intention of the General Assembly that the Commission first address the revisions to temporary rule 15A NCAC 2B.0233 required by subdivision (1) of subsection (a) of Section 8 of this act and that the Commission adopt all temporary rules required by or necessary to implement this act no later than 15 February 1999.

(b) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Sedimentation Control Commission may adopt temporary rules to implement Section 11 of this act until 1 July 1999. It is the intention of the General Assembly that the Sedimentation Control Commission adopt any temporary rules that may be necessary

to implement Section 11 of this act no later than 15 February 1999. If the Sedimentation Control Commission determines that adoption of a temporary rule is necessary to implement Section 11 of this act, the Sedimentation Control Commission shall proceed, in accordance with Article 2A of Chapter 150B of the General Statutes, with the adoption of a permanent rule to replace the temporary rule. The Sedimentation Control Commission shall require local erosion control programs approved under G.S. 113A-60 to implement the requirements of G.S. 113A-61(b1), as amended by Section 11 of this act.

Section 13. **Department may accept donations of real property.** -- The Department may accept donations of real property and interests in real property if the real property or interest in real property is a riparian buffer or will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality.

Section 14. **Commission to establish riparian buffer maintenance and restoration goal.** -- The Commission shall establish a goal for the maintenance and restoration of riparian buffers that is consistent with the thirty percent (30%) nitrogen reduction goal for the Neuse River estuary established by Chapter 572 of the 1995 Session Laws (1996 Regular Session).

Section 15. **Report on implementation of act to the Environmental Review Commission.** -- The Commission and the Department shall jointly report to the Environmental Review Commission on progress in implementing this act on or before 1 December 1998 and 1 March 1999. The reports shall include any proposed legislation that the Commission or the Department recommends as necessary or desirable to achieve the purposes of this act, to improve water quality in the Neuse River or the Neuse estuary, or to better achieve the purposes of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy.

Section 16. **Repeal of unnecessary reporting requirement.** -- Section 3 of Chapter 572 of the 1995 Session Laws (1996 Regular Session) is repealed.

Section 17. **Headings for convenience only.** -- The headings to the sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 18. **Severability provision.** -- If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 19. **Effective date of act.** -- This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1402

Short Title: Disapprove Neuse River Basin Rule. (Public)

Sponsors: Representatives Creech; and Weatherly.

Referred to: Environment.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE AN ADMINISTRATIVE RULE ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B .0233, (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Environmental Management Commission, and approved by the Rules Review Commission on February 19, 1998, is disapproved.

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

North Carolina General Assembly
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August 19, 1998

MEMORANDUM

To: House Committee on Finance

From: Jeff Hudson, House Environment Committee Counsel
George F. Givens, House Environment Committee Counsel

Regarding: Proposed Committee Substitute for House Bill 1402 (Disapprove/Revise Neuse River Basin Rule)

Proposed Committee Substitute for House Bill 1402 (Disapprove/Revise Neuse River Basin Rule)

Section 1 provides definitions that apply throughout this act.

Section 2 disapproves the Neuse Buffer Rule as a permanent rule but provides that it will remain in effect as a temporary rule until the revisions to the temporary rule required by this act become effective. Section 2 also directs the Environmental Management Commission (Commission) and the Department of Environment and Natural Resources (Department) to implement the temporary Neuse Buffer Rule in accordance with the requirements of this act.

Section 3 provides that for purposes of implementing the temporary Neuse Buffer Rule, the existence of surface water on a particular parcel of land will be presumed if the surface water appears on either the most recent soil survey maps or United States Geological Survey topographic maps. Any question as to the accuracy of these maps will be determined by the Director of the Division of Water Quality in the Department (Director). The Director's determination will be subject to both administrative and judicial review. In addition, for purposes of the temporary Neuse Buffer Rule, Section 3 defines "forested vegetation" as vegetation consisting of trees and woody perennial plants with associated herbaceous vegetation in conjunction with a defined surface layer consisting of leaves, branches, and other plant material, including mature and successional forest areas and cutover areas.

Section 4 directs the Commission to adopt rules that provide alternatives to Neuse Buffer Rule compliance for persons who demonstrate both that they have attempted to avoid and minimize riparian buffer loss and that there is no practical alternative to this loss. These alternatives will include:

- Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund
- Donation of real property or an interest in real property to the Department, a unit of local government, or a private nonprofit conservation organization if the property is a riparian buffer or potential riparian buffer that provides water quality protection equivalent to or greater than that provided by the lost riparian buffer and the donee agrees to maintain the property as a riparian buffer
- Establishment, restoration, or enhancement of a riparian buffer not protected by the Neuse Buffer Rule

Compensatory mitigation is only available for the loss of a riparian buffer along an intermittent stream and must be conducted within the Neuse River Basin. This section also directs the Commission to establish a compensatory mitigation fee schedule based on the area of a riparian buffer that is destroyed and the cost to provide equivalent or greater water quality protection.

Section 5 establishes the Riparian Buffer Restoration Fund (Fund) to accept compensatory mitigation fees and monetary contributions that promote the restoration, enhancement, or creation of riparian buffers. The Fund will be administered by the Division of Water Quality in the Department. Monies may only be expended from the Fund to restore, acquire, create, enhance, and maintain riparian buffers to offset water quality benefits lost due to the loss of buffers. A compensatory mitigation fee paid into the Fund must be used for a project in the same river basin as the riparian buffer that is lost.

Section 6 directs the Commission to adopt rules that provide for the delegation of the implementation and enforcement responsibilities of the Neuse River Basin riparian buffer requirements to units of local government that have the power to regulate land use.

Section 7 prohibits the Commission and Department from applying the temporary Neuse Buffer Rule to:

- A statutory vested right to develop established prior to July 22, 1997
- A common law vested right to develop established prior to the date this act becomes effective if, prior to July 22, 1997, the Commission has issued a certification pursuant to its authority to administer the federal Clean Water Act

This section also prohibits the Commission from adopting rules that confer or restrict a vested right to undertake or complete development. Finally, Section 7 states the intent of the General Assembly that the vesting provisions of this act apply only to the subject matter of this act and do not establish a precedent as to vesting under zoning, land-use planning, or other environmental programs.

Section 8 directs the Commission to revise the temporary Neuse Buffer Rule by:

- Establishing a scientifically valid, easily understandable, and cost-effective method for determining the presence of surface waters on a particular parcel of land
- Establishing a method for measuring riparian buffer zones appropriate to the different regions of the Neuse River Basin
- Determining, based on drainage area, those segments of intermittent streams to which the riparian buffer requirements do not apply
- Defining forest vegetation
- Establishing exemptions and uses that may be allowed within a riparian area
- Establishing criteria to determine whether practical alternatives exist

Section 8 also restates current law under the Administrative Procedures Act that requires the Commission to set out in rule all provisions that directly or substantially affect the procedural or substantive rights or duties of third parties. Finally, Section 8 directs the Commission to proceed with permanent rulemaking once the temporary Neuse Buffer Rule has been revised and provides that the temporary Neuse Buffer Rule will remain in effect until the permanent rule becomes effective.

Section 9 directs the Commission to review:

- Implementation of the Neuse River Basin Nutrient Sensitive Waters Management Strategy
- Progress in achieving the 30% nitrogen reduction goal and other milestones related to Neuse River water quality
- Impact of the implementation of the Neuse River Nutrient Sensitive Waters Management Strategy on the regulated community

Section 9 also directs the Commission to report the results of its review, including any recommendations, to the Environmental Review Commission by December 1, 2000 and December 1, 2001.

Section 10 directs the Commission to implement the temporary Neuse Buffer Rule and revise the permanent rule with the assistance of a stakeholder advisory committee composed of 23 appointees and representatives as follows:

1. An at large member to serve as Chair, appointed by the Secretary
2. A member of the Commission, appointed by the Chair of the Commission
3. The Director of the Division of Water Quality
4. Chief, Regulatory Branch, Wilmington District, United States Army Corps of Engineers
5. NC Association of Soil and Water Conservation Districts
6. NC Association of County Commissioners
7. NC League of Municipalities
8. Water Resources Research Institute
9. Upper Neuse River Basin Association
10. Lower Neuse River Basin Association
11. NC Association of Environmental Professionals
12. NC Chapter of the American Planning Association
13. NC Aggregates Association
14. NC Citizens for Business and Industry
15. NC Farm Bureau Federation
16. NC Forestry Association
17. NC Home Builders Association
18. A commercial land developer, appointed by the Secretary
19. Conservation Council of North Carolina
20. NC Environmental Defense Fund
21. Neuse River Foundation
22. NC Chapter of the Sierra Club
23. NC Wildlife Federation

Section 11 requires the Director of the Division of Land Resources and any local government to which implementation of the State program has been delegated to disapprove an erosion control plan if the plan would result in a violation of Commission rules to protect riparian buffers along surface waters.

Section 12 authorizes the Environmental Management Commission and the Sedimentation Control Commission to adopt temporary rules to implement this act until July 1, 1999. This section further states that it is the intent of the General Assembly that both commissions adopt all temporary rules necessary to implement this act by February 15, 1999.

Section 13 authorizes the Department to accept donations of interests in real property if the property is a riparian buffer or potential riparian buffer that will provide water quality protection.

Section 14 directs the Commission to establish a goal for the maintenance and restoration of riparian buffers that is consistent with the 30% nitrogen reduction goal for the Neuse River estuary established by the General Assembly during the 1996 Regular Session.

Section 15 requires the Environmental Management Commission and the Department to report to the Environmental Review Commission on progress in implementing this act by December 1, 1998 and by March 1, 1999. The reports will include any proposed legislation recommended by the Environmental Management Commission or the Department as necessary or desirable to achieve the purposes of this act, the purposes of the Neuse River Nutrient Sensitive Waters Management Strategy, or to improve water quality in the Neuse River Basin.

Section 16 repeals a reporting requirement that is replaced by the reporting requirements established by Sections 9 and 13 of this act.

Section 17 explains that the headings in this act are only a convenience for the reader.

Section 18 is a severability clause.

Section 19 makes this act effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

DATE: August 19, 1998

TO: House Committee on Finance

FROM: Mona Moon
Fiscal Research Division

RE: House Bill 1402 Disapprove/Revise Neuse River Basin Rule

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES			**No Estimate Available**		
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Division of Water Quality, Division of Land Resources; Local Units of Government

EFFECTIVE DATE: When the act becomes law.

BILL SUMMARY:
House committee substitute makes the following changes to 1st edition. Disapproves in part the permanent Neuse River Basin Nutrient Sensitive Waters Management Strategy, 15A NCAC 2B.0233 (the "current EMC rule"), providing for the current EMC rule subject to certain legislative changes (the "legislated temporary rule") to remain in effect until a new rule (the "new EMC rule") becomes effective. (The 1st edition of this bill disapproved of the EMC rule altogether, as provided in GS 150B-21.3(b).)

Legislated temporary rule: presence of surface water. Requires the presence of surface waters in the Neuse River basin to be determined presumptively by reference to either the most recent versions of the soil survey maps prepared by the U.S. Department of Agriculture or the 7.5

minute quadrangle maps prepared by the U.S. Geologic Survey. In the event of a question as to the accuracy of these maps with respect to the presence of surface water, provides for determination by the director of the Division of Water Quality of the Department of Environment and Natural Resources, subject to contested case review under GS Ch. 150B, with a final agency decision by the Environmental Management Commission (EMC).

Legislated temporary rule: headwaters exclusion. Excludes from the requirements of the EMC rule any segment of an intermittent stream that drains an area of 25 acres or less.

Legislated temporary rule: definition of "forest vegetation." Defines "forest vegetation" as vegetation consisting of trees and woody perennial plants with associated herbaceous vegetation in conjunction with a defined surface layer consisting of leaves, branches and other plant material, and including mature and successional forest areas and cutover areas.

Compensatory mitigation fees. Allows persons to remove riparian buffers in the Neuse basin, notwithstanding the requirements of the legislated temporary rule or the EMC rule, by paying fees or donating property in a program created by the EMC. To qualify for this compensatory mitigation program, a person must demonstrate that he or she has attempted to avoid and minimize the loss of riparian buffer and that there is no practical alternative to the loss of the buffer. Compensatory mitigation is available only for loss of riparian buffer along an intermittent stream. Creates a new Riparian Buffer Restoration Fund as a nonreverting fund within the Department of Environment and Natural Resources to hold compensatory mitigation fees.

Delegation of riparian buffer protection requirements to local government. Authorizes and creates procedure for delegation of implementation and enforcement of riparian buffer protection requirements to units of local government in the Neuse River basin that have the power to regulate land use. Authorizes the EMC to adopt rules to implement this section.

Recognition of vested development rights. Provides that the legislated temporary rule and the new EMC rule do not apply to development with vested rights recognized or established under GS 153A-344(b), 153A-344.1, 160A-385(b) or 160A-385.1 prior to July 22, 1997 in the Neuse River basin. For development with vested rights under common law, the legislated rule and the new EMC rule do not apply to rights recognized or established prior to the effective date of this act, if the EMC has issued a certification pursuant to GS 143B-282(a)(1)u (a "401 certification" under the federal Clean Water Act).

Requirements for the new EMC rule. Requires the EMC to adopt a new rule (first as a temporary rule, then as a permanent rule) for the Neuse River basin that (1) establishes a method for determining the presence of surface waters that is scientifically valid, easily understandable, efficient, consistent, reliable and cost-effective, as well as a means for resolving disputes; (2) establishes methods to determine the landward extent of zones within protected riparian buffers appropriate to different regions of the basin; (3) excludes certain drainage areas along intermittent streams from riparian buffer requirements; (4) defines forest vegetation; (5) establishes exemptions and permitted uses within riparian areas; and (6) establishes criteria to determine whether there is a practical alternative to the loss of riparian buffer.

Stakeholder advisory committee. Requires the new EMC rule to be developed with the assistance and advice of a stakeholder advisory committee consisting of 23 members specified in the statute.

EMC review and reports on rule implementation. Requires the EMC to review implementation of the Neuse Nutrient Sensitive Management Strategy, including progress

towards the 30% nitrogen reduction goal of 1995 SL, Ch. 572 and the effect of the strategy on regulated parties. Requires reports to the EMC by Dec. 1, 2000 and Dec. 1, 2001. Also requires joint reports to the EMC on progress in implementing this act on or before Dec. 1, 1998 and March 1, 1999.

Sediment control plans consistent with riparian buffer requirements. Amends GS 113A-54.1(c) and 113A-61(b1) to require the director of the Division of Land Resources in DENR and any authorized local government to disapprove an erosion control plan that would result in violation of the Neuse River basin riparian buffer requirements.

Temporary rule deadlines. Authorizes the EMC to adopt temporary rules to implement the act until July 1, 1999. Authorizes the Sedimentation Control Commission to adopt temporary rules to implement the required changes to sediment control plans until July 1, 1999.

Donations of real property. Authorizes DENR to accept donations of real property and interests in real property that are riparian buffers or will be used to restore, create, enhance or maintain riparian buffers to protect water quality.

EMC to establish riparian buffer maintenance and restoration goal. Requires the EMC to establish a goal for maintenance and restoration of riparian buffers consistent with the 30% nitrogen reduction goal of 1995 SL, Ch. 572.

Severability. Includes a severability clause in case portions of this act are declared unconstitutional or invalid. [1]

ASSUMPTIONS AND METHODOLOGY:

The bill provides that the Neuse Buffer Rule will remain in effect as a temporary rule until revisions required by the act become effective. According to the Department of Environment and Natural Resources (DENR), the fiscal note for the rule provided that it be implemented with existing resources. Therefore, this fiscal note addresses requirements imposed by the bill that appear to be above and beyond the requirements of the temporary rule.

COMPENSATORY MITIGATION FEES – The Environmental Management Commission (EMC) is responsible for developing a compensatory mitigation fee schedule to provide an alternative to maintaining riparian buffers. Payment of a fee into the Riparian Restoration Fund established in the bill will be an option available to persons in lieu of complying with the requirements of the revised temporary rule and permanent rule required by the bill. Revenues to be credited to the fund cannot be estimated until the EMC adopts a fee schedule. The bill does not establish a minimum nor maximum fee amount, but requires the fee schedule to be commensurate with the cost of providing equivalent or greater water quality than the area impacted. In addition, the department does not currently have a reliable estimate of the number of projects that may opt to pay the compensatory mitigation fee.

RIPARIAN BUFFER RESTORATION FUND – The bill establishes the Riparian Buffer Restoration Fund to be credited with compensatory mitigation fees and any other monetary contributions. The funds may be used to restore, acquire, create, enhance and maintain riparian buffers.

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[1] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, Vol. 1998, August 12, 1998.

Expenditures of the fund cannot be estimated until the EMC adopts the compensatory mitigation fee schedule, as most of the fund's revenue is expected to be derived from the payment of these fees.

Although the bill directs the EMC to establish a program to provide alternatives to maintaining buffers as required by the rule, it does not statutorily establish a Riparian Buffer Restoration Program outlining the purpose and requirements for implementation of the program. Section 15 of the bill requires the Department to report on proposed legislation required to implement the act. It is anticipated that additional statutory language for the program will be needed to guide its implementation. The department may require additional staff and resources to administer the program; however, the lack of a reliable estimate of the number of projects that may impact riparian buffers in the Neuse River Basin makes it difficult to determine an appropriate level of administrative support.

DELEGATION OF RIPARIAN BUFFER REQUIREMENTS TO LOCAL GOVERNMENTS – The bill allows the EMC to delegate implementation and enforcement responsibilities of the Neuse River Basin riparian buffer requirements to units of local government with the authority to regulate land use. Under the temporary rule the Division of Water Quality is responsible for implementation and enforcement activities. So this provision potentially reduces the amount of staff time and resources devoted to the program. The department does anticipate incurring one-time cost in the development of the local government ordinance and memorandum of agreement delegating compliance and enforcement authority.

Local government units applying for delegation of responsibility of the riparian buffer protection requirement may incur costs associated with administering the program. Such expenditures are likely to vary depending on the number of projects within the local unit's jurisdiction and current staff and resources.

STAKEHOLDER ADVISORY COMMITTEE – The bill directs DENR to provide professional and clerical staff support for the committee. It is anticipated that these costs can be absorbed within existing resources.

EROSION CONTROL PLANS – The Division of Land Resources anticipates an increase in the amount of time required to review erosion control plans for projects subject to the Neuse River Buffer rule. Without additional resources, the division estimates a 20% reduction in current activities within the basin.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H1402-PCS2416-RT007-001.01

H. B. No. 1402 DATE 8-19-98

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Dickson
) _____
~~Sen.~~)

1 moves to amend the bill on page 2, line 34
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting that line to read:
4
5 "surface waters; forest".
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SIGNED W Dickson

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1402
Committee Substitute Favorable 8/12/98
Proposed Committee Substitute H1402-PCS3178-RT008

Short Title: Disapprove/Revise Neuse River Basin Rule. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE 15A NCAC 2B.0233 (THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY) AS A PERMANENT RULE, TO CONTINUE 15A NCAC 2B.0233 IN EFFECT AS A TEMPORARY RULE, TO SPECIFY HOW THE TEMPORARY RULE IS TO BE IMPLEMENTED, TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION (EMC) TO ADOPT RULES TO PROVIDE ALTERNATIVES TO MAINTAINING RIPARIAN BUFFERS AND TO ESTABLISH COMPENSATORY MITIGATION FEES, TO ESTABLISH THE RIPARIAN BUFFER RESTORATION FUND, TO REQUIRE THE EMC TO ADOPT RULES TO PROVIDE FOR DELEGATION OF THE RIPARIAN BUFFER PROGRAM TO UNITS OF LOCAL GOVERNMENT THAT SEEK SUCH DELEGATION, TO RECOGNIZE VESTED DEVELOPMENT RIGHTS, TO REQUIRE THE EMC TO REVISE THE TEMPORARY RULE CONTINUED IN EFFECT BY THIS ACT AND TO ADOPT A REVISED PERMANENT RULE WITH THE ASSISTANCE OF A STAKEHOLDER ADVISORY COMMITTEE, TO PROVIDE THAT EROSION CONTROL PLANS WILL BE CONSISTENT WITH RIPARIAN BUFFER REQUIREMENTS, TO REQUIRE THE EMC TO ESTABLISH A RIPARIAN BUFFER MAINTENANCE AND RESTORATION GOAL, TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ACCEPT DONATIONS OF REAL PROPERTY, TO PROVIDE FOR PERIODIC REVIEW OF THE IMPLEMENTATION OF

THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY AND REPORTS TO THE ENVIRONMENTAL REVIEW COMMISSION, AND TO AUTHORIZE THE EMC TO ADOPT TEMPORARY RULES TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

Section 1. **Definitions.** -- Unless otherwise required by the context, the following definitions apply throughout this act:

(1) "Commission" means the Environmental Management Commission.

(2) "Department" means the Department of Environment and Natural Resources.

(3) "Secretary" means the Secretary of Environment and Natural Resources.

(4) "Temporary rule 15A NCAC 2B.0233" means 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), adopted as a temporary rule by the Commission effective 22 July 1997, amended by the Commission effective 22 April 1998, and continued in effect by Section 2 of this act.

Section 2. **Permanent rule disapproved; temporary rule continued in effect.** -- Pursuant to G.S. 150B-21.3(b), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission and approved by the Rules Review Commission on 19 February 1998, is disapproved as a permanent rule. Notwithstanding G.S. 150B-21.1(d), 15A NCAC 2B.0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation), as amended by the Commission effective 22 April 1998, shall remain in effect as a temporary rule until the revised temporary rule required by Section 8 of this act becomes effective. The Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in Section 3 of this act.

Section 3. **Implementation of the temporary rule: determination of surface waters; forest vegetation defined.** -- (a) Until the effective date of the revised temporary rule that the Commission is required to adopt by Section 8 of this act, the Commission and the Department shall implement temporary rule 15A NCAC 2B.0233 as provided in this section.

(b) For purposes of implementing temporary rule 15A NCAC 2B.0233, the presence of surface waters in the Neuse River Basin, including intermittent streams, perennial streams, lakes, ponds, and estuaries shall be determined solely as provided in this subsection and subsection (c) of this section. Surface water is presumed to be present on a particular parcel or tract of land if surface water appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or

the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geological Survey (USGS).

(c) The General Assembly recognizes that the soil survey maps and the USGS topographic maps may be in error in that these maps may indicate the presence of surface water where no surface water is actually present and may fail to indicate the presence of surface water where surface water is actually present. Any question as to the accuracy or application of the maps to a particular parcel or tract of land shall be referred to the Director of the Division of Water Quality of the Department. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of Chapter 150B of the General Statutes. The Commission shall make the final agency decision in a contested case involving a determination under this section. A determination of the presence of surface waters pursuant to this section applies only to the implementation of temporary rule 15A NCAC 2B.0233.

(d) As used in temporary rule 15A NCAC 2B.0233, "forest vegetation" is not defined by 15A NCAC 2B.0202 but instead means vegetation consisting of trees and woody perennial plants with associated herbaceous vegetation in conjunction with a defined surface layer consisting of leaves, branches, and other plant material. "Forest vegetation" includes mature and successional forest areas and cutover areas.

Section 4. **Alternatives to maintaining riparian buffers; compensatory mitigation fees.** -- (a) The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain existing riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with the requirements of the revised temporary rule and permanent rule required by Section 8 of this act. Alternatives shall include, but are not limited to:

(1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund.

(2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property is either:

a. A riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost; or

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost.

(3) Establishment, restoration, or enhancement of a riparian buffer that is not otherwise required to be protected.

(b) Compensatory mitigation is only available for loss of a riparian buffer along an intermittent stream. Compensatory mitigation shall be conducted within the Neuse River Basin.

(c) The Commission shall establish a standard schedule of compensatory mitigation fees. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality by:

(1) Restoring existing riparian buffers.

(2) Acquiring land for and creation of new riparian buffers.

(3) Monitoring and maintaining the restored or created riparian buffers over time.

(d) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

Section 5. **Riparian Buffer Restoration Fund.** -- (a) G.S. 143-214.15 through G.S. 143-214.20 are reserved for future codification purposes.

(b) Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.21. Riparian Buffer Protection Program: Riparian Buffer Restoration Fund.**

The Riparian Buffer Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Riparian Buffer Restoration Fund shall provide a repository for monetary contributions to promote projects for the restoration, enhancement, or creation of riparian buffers and for compensatory mitigation fees paid to the Department. The Fund shall be administered by the Division of Water Quality within the Department. Monies shall be expended from the Fund only for those purposes directly related to the restoration, acquisition, creation, enhancement, and maintenance of riparian buffers to offset the benefits to water quality, including the removal of nutrients, lost through the loss of buffers. Compensatory mitigation fees paid into the Fund in connection with the loss of riparian buffers in a river basin and the interest earned on those fees may be used only for projects in that river basin."

Section 6. **Delegation of riparian buffer protection requirements to local governments.** -- (a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements in the Neuse River Basin to units of local government that have the

power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government in the Neuse River Basin that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a delegation unless the Commission finds that local implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that any unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Division of Water Quality in the Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule.

Section 7. **Recognition of vested development rights.** -- (a) Vested rights recognized or established under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 shall include the right as provided in this section, to undertake and complete development in the Neuse River Basin without application of temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 8 of this act. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 8 of this act to development with vested rights recognized or established under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to 22 July 1997. The Commission and the Department shall not apply temporary rule 15A NCAC 2B.0233 and the revised temporary rule required by Section 8 of this act to

development with vested rights recognized or established under the common law prior to the date this act becomes effective if the Commission has issued a certification pursuant to G.S. 143B-282(a)(1)u. prior to 22 July 1997.

(b) The Commission shall not adopt rules that confer or restrict a vested right to undertake or complete development.

(c) It is the intent of the General Assembly that this section apply only to the particular circumstances that are the subject of this act. This section does not establish a precedent as to the application of vesting under a zoning or land-use planning program administered by a local government to any other environmental program.

Section 8. **Revision of temporary rule 15A NCAC 2B.0233; adoption of a permanent rule to replace the temporary rule.** -- (a) The Commission shall revise temporary rule 15A NCAC 2B.0233 in accordance with this section. The Commission shall:

(1) Establish a method for determining the presence of surface waters on a particular parcel or tract of land in the Neuse River Basin. The Commission shall establish a method that is scientifically valid, easily understandable, efficient, consistent, reliable, and cost-effective, including a method for resolving disputes regarding the presence of surface waters on any particular parcel or tract of land.

(2) Establish methods to determine the point from which to measure the landward extent of zones within a protected riparian buffer appropriate to the different regions of the Neuse River Basin.

(3) Determine, based on drainage area, those segments of intermittent streams to which the riparian buffer protection requirements do not apply. The Commission may establish different drainage areas for segments of intermittent streams located in different parts of the Neuse River Basin on the basis of topography and other relevant factors.

(4) Define forest vegetation.

(5) Establish a clearly defined set of exemptions and uses that will be allowed within a riparian area.

(6) Establish criteria to determine whether there exists a practical alternative to the loss of the riparian buffer.

(b) All provisions that the Commission finds to be necessary to revise temporary rule 15A NCAC 2B.0233 and to implement the revised temporary rule shall be set out in the revised temporary rule. The Commission and the Department may develop and use guidance documents and other statements that concern only the internal management of the Commission and the Department. Neither the Commission nor the Department may develop or use any guidance document or other statement that directly or substantially affects the procedural or substantive rights or duties of any person not employed by the Commission or the Department

unless those documents are set out in rules adopted in accordance with the provisions of Article 2A of Chapter 150B of the General Statutes.

(c) The Commission shall develop revisions to temporary rule 15A NCAC 2B.0233 with the assistance and advice of the Stakeholder Advisory Committee appointed for that purpose as provided in Section 10 of this act. Notwithstanding G.S. 150B-21.1(d), the revised temporary rule shall not expire until the permanent rule required by subsection (d) of this section becomes effective.

(d) Once temporary rule 15A NCAC 2B.0233 has been revised as required by this section, the Commission shall proceed, in accordance with Article 2A of Chapter 150B of the General Statutes, with the adoption of a permanent rule to replace the revised temporary rule.

Section 9. **Commission to review the implementation of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy.** -- The Commission shall review the implementation of the Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy. As a part of this review, the Commission shall assess progress toward implementation of the Management Strategy, achievement of the nitrogen reduction goal established by Chapter 572 of the 1995 Session Laws (1996 Regular Session) and any other milestones related to the effort to improve water quality in the Neuse River and Neuse estuary established by the Commission, and the impact of the implementation of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy on the regulated community. The Commission shall report the results of this review, including any recommendations relative to water quality in the Neuse River and Neuse estuary, to the Environmental Review Commission no later than 1 December 2000. The Commission shall conduct a second review and report the results, including any recommendations, to the Environmental Review Commission no later than 1 December 2001.

Section 10. **Stakeholder Advisory Committee.** -- (a) The Commission shall develop the rules required by Sections 4 and 6 of this act and the revisions to temporary rule 15A NCAC 2B.0233 and the permanent rule required by Section 8 of this act with the assistance of a Stakeholder Advisory Committee. The Stakeholder Advisory Committee shall consist of 23 members as follows:

(1) A member of the public at large who shall serve as Chair of the Stakeholder Advisory Committee, appointed by the Secretary.

(2) A member of the Environmental Management Commission, appointed by the Chair of the Commission.

(3) The Director of the Division of Water Quality or the Director's designee.

(4) The Chief, Regulatory Branch, Wilmington District, United States Army Corps of Engineers or the Chief's designee, if the Wilmington District office agrees to make an appointment.

(5) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.

(6) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.

(7) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
(8) The Director of the Water Resources Research Institute of The University of North Carolina or the Director's designee.
(9) The Chair of the Upper Neuse River Basin Association or the Chair's designee.
(10) The President of the Lower Neuse River Basin Association or the President's designee.
(11) The President of the North Carolina Association of Environmental Professionals or the President's designee.
(12) The President of the North Carolina Chapter of the American Planning Association or the President's designee.
(13) The Executive Director of the North Carolina Aggregates Association, Inc., or the Executive Director's designee.
(14) The President of North Carolina Citizens for Business and Industry or the President's designee.
(15) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
(16) The Executive Vice-President of the North Carolina Forestry Association, Inc., or the Executive Vice-President's designee.
(17) The Executive Vice-President of the North Carolina Home Builders Association, Inc., or the Executive Vice-President's designee.
(18) A commercial land developer appointed by the Secretary.
(19) The President of the Conservation Council of North Carolina, Inc., or the President's designee.
(20) The Director of the North Carolina Environmental Defense Fund or the Director's designee.
(21) The President of the Neuse River Foundation, Inc., or the President's designee.
(22) The Chair of the North Carolina Chapter of the Sierra Club or the Chair's designee.
(23) The President of the North Carolina Wildlife Federation, Inc., or the President's designee.

(b) The Director of the Division of Water Quality of the Department shall assign appropriate professional and clerical staff to assist the Stakeholder Advisory Committee in the performance of its duties under this act.

(c) The Stakeholder Advisory Committee created by this section shall terminate when it makes its final recommendations to the Commission.

Section 11. **Erosion control plans consistent with riparian buffer requirements.** -- (a) G.S. 113A-54.1(c) reads as rewritten:

"(c) The Director of the Division of Land Resources shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers

along surface waters. The Director of the Division of Land Resources may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

(b) G.S. 113A-61(b1) reads as rewritten:

"(b1) A local government shall disapprove an erosion control plan if the plan, when implemented, would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

Section 12. **Temporary rules authorized.** -- (a) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Commission may adopt temporary rules to implement this act and to correct other rules related to the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy until 1 July 1999. It is the intention of the General Assembly that the Commission first address the revisions to temporary rule 15A NCAC 2B.0233 required by subdivision (1) of subsection (a) of Section 8 of this act and that the Commission adopt all temporary rules required by or necessary to implement this act no later than 15 February 1999.

(b) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Sedimentation Control Commission may adopt temporary rules to implement Section 11 of this act until 1 July 1999. It is the intention of the General Assembly that the Sedimentation Control Commission adopt any temporary rules that may be necessary to implement Section 11 of this act no later than 15 February 1999. If the Sedimentation Control Commission determines that adoption of a temporary rule is necessary to implement Section 11 of this act, the Sedimentation Control Commission shall proceed, in accordance with Article 2A of Chapter 150B of the General Statutes, with the adoption of a permanent rule to replace the temporary rule. The Sedimentation Control Commission shall require local erosion control programs approved under G.S. 113A-60 to implement the requirements of G.S. 113A-61(b1), as amended by Section 11 of this act.

Section 13. **Department may accept donations of real property.** -- The Department may accept donations of real property and interests in real property if the real property or interest in real property is a riparian buffer or will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality.

Section 14. **Commission to establish riparian buffer maintenance and restoration goal.** -- The Commission shall establish a goal for the maintenance and restoration of riparian buffers that is consistent with the thirty percent (30%) nitrogen reduction goal for the Neuse River estuary established by Chapter 572 of the 1995 Session Laws (1996 Regular Session).

Section 15. **Report on implementation of act to the Environmental Review Commission.** -- The Commission and the Department shall jointly report to the Environmental Review Commission on progress in implementing this act on or before 1 December 1998 and 1 March 1999. The reports shall include any proposed legislation that the Commission or the Department recommends as necessary or desirable to achieve the purposes of this act, to improve water quality in the Neuse River or the Neuse estuary, or to better achieve the purposes of the Neuse River Nutrient Sensitive Waters (NSW) Management Strategy.

Section 16. **Repeal of unnecessary reporting requirement.** -- Section 3 of Chapter 572 of the 1995 Session Laws (1996 Regular Session) is repealed.

Section 17. **Headings for convenience only.** -- The headings to the sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 18. **Severability provision.** -- If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 19. **Effective date of act.** -- This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
H.B. 1402 A BILL TO BE ENTITLED AN ACT TO DISAPPROVE 15A NCAC 2B.0233 (THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY) AS A PERMANENT RULE, TO CONTINUE 15A NCAC 2B.0233 IN EFFECT AS A TEMPORARY RULE, TO SPECIFY HOW THE TEMPORARY RULE IS TO BE IMPLEMENTED, TO REQUIRE THE ENVIRONMENTAL MANAGEMENT COMMISSION (EMC) TO ADOPT RULES TO PROVIDE ALTERNATIVES TO MAINTAINING REPARIAN BUFFERS AND TO ESTABLISH COMPENSATORY MITIGATION FEES, TO ESTABLISH THE RIPARIAN BUFFER RESTORATION FUND, TO REQUIRE THE EMC TO ADOPT RULES TO PROVIDE FOR DELEGATION OF THE RIPARIAN BUFFER PROGRAM TO UNITS OF LOCAL GOVERNMENT THAT SEEK SUCH DELEGATION, TO RECOGNIZE VESTED DEVELOPMENT RIGHTS, TO REQUIRE THE EMC TO REVISE THE TEMPORARY RULE CONTINUED IN EFFECT BY THIS ACT AND TO ADOPT A REVISED PERMANENT RULE WITH THE ASSISTANCE OF A STAKEHOLDER ADVISORY COMMITTEE, TO PROVIDE THAT EROSION CONTROL PLANS WILL BE CONSISTENT WITH RIPARIAN BUFFER REQUIREMENTS, TO REQUIRE THE EMC TO ESTABLISH A RIPARIAN BUFFER MAINTENANCE AND RESTORATION GOAL, TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ACCEPT DONATIONS OF REAL PROPERTY, TO PROVIDE FOR PERIODIC REVIEW OF THE IMPLEMENTATION OF THE NEUSE RIVER NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY AND REPORTS TO THE ENVIRONMENTAL REVIEW COMMISSION, AND TO AUTHORIZE THE EMC TO ADOPT TEMPORARY RULES TO IMPLEMENT THIS ACT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill (# 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.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 916
Second Edition Engrossed 5/22/97
Proposed Committee Substitute S916-CSLA-001

Short Title: Cosmetology and Massage Therapy. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS REGULATING COSMETIC ART AND TO REGULATE THE PRACTICE OF MASSAGE AND BODYWORK THERAPY.

The General Assembly of North Carolina enacts:

PART I. REWRITE OF THE NC COSMETIC ART ACT.

Section 1. Chapter 88 of the General Statutes is repealed.

Section 2. The General Statutes are amended by adding the following new Chapter to read:

"Chapter 88B.

"Cosmetic Art.

"**§ 88B-1. Short title.**

This act shall be known and may be cited as the North Carolina Cosmetic Art Act.

"**§ 88B-2. Definitions.**

The following definitions apply in this Chapter:

(1) Apprentice. -- A person who is not a manager or operator, and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.

(2) Board. -- The North Carolina Board of Cosmetic Art Examiners.

(3) Booth. -- A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.

(4) Booth renter. -- A person who rents a booth in a cosmetic art shop.

(5) Cosmetic art. -- All or any part or combination of: (i) the systematic massaging with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet; (ii) the use of cosmetic chemicals and preparations and antiseptics; (iii) manicuring, including the application of artificial nails; (iv) esthetics; or (v) cutting, coloring, cleansing, arranging, dressing, waving, and marcelling the hair, and the use of electricity for stimulating growth of hair.

(6) Cosmetic art shop. -- Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.

(7) Cosmetic art school. -- Any building or part thereof where cosmetic art is taught.

(8) Cosmetologist. -- Any individual who is licensed to practice all parts of cosmetic art.

(9) Cosmetology teacher. -- An individual licensed by the Board to teach all parts of cosmetic art.

(10) Esthetician. -- An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.

(11) Esthetician teacher. -- An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.

(12) Manicurist. -- An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.

(13) Manicuring. -- The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term 'manicuring' shall not include the treatment of pathologic conditions.

(14) Manicurist teacher. -- An individual licensed by the Board to teach manicuring.

(15) Shampooing. -- The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair.

"§ 88B-3. Creation and membership of the Board; term of office; removal for cause; officers.

(a) The North Carolina Board of Cosmetic Art Examiners is established. The Board shall consist of six members who shall be appointed as follows:

(1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a cosmetologist.

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a cosmetologist.

(3) The Governor shall appoint two cosmetologists, a cosmetology teacher, and a member of the public who is not licensed under this Chapter.

(b) Each cosmetologist member shall have practiced all parts of cosmetic art in this State for at least five years immediately preceding appointment to the Board and shall not have any connection with any cosmetic art school while serving on the Board. The cosmetology teacher member shall be currently employed as a teacher by a North Carolina public school, community college, or other public or private cosmetic art school and shall have practiced or taught cosmetic art for at least five years immediately preceding appointment to the Board.

(c) Cosmetologist members of the Board shall serve staggered terms of three years. No Board member shall serve more than two consecutive terms, except that each member shall serve until a successor is appointed and qualified. All other board members shall serve three-year terms, but they shall not be staggered.

(d) The Governor may remove any member of the Board for cause.

(e) A vacancy shall be filled in the same manner as the original appointment, except that unexpired terms in seats appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(f) The Board shall elect a chair, a vice-chair, and other officers as deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(g) The Board shall not issue a teacher's license to any Board member during that member's term on the Board.

(h) No Board member may be employed by the Board for at least one year after that member's term expires.

"**§ 88B-4. Powers and duties of the Board.**

(a) The Board shall have the following powers and duties:

(1) To administer and interpret this Chapter.

(2) To adopt, amend, and repeal rules to carry out the provisions of this Chapter.

(3) To examine and determine the qualifications and fitness of applicants for licensure under this Chapter.

(4) To issue, renew, deny, restrict, suspend, or revoke licenses.

(5) To conduct investigations of alleged violations of this Chapter or the Board's rules.

(6) To collect fees required by G.S. 88B-20 and any other monies permitted by law to be paid to the Board.

(7) To approve new cosmetic art schools.

(8) To inspect cosmetic art schools and shops.

(9) To adopt rules for the sanitary management and physical requirements of cosmetic art shops and cosmetic art schools.

(10) To establish a curriculum for each course of study required for the issuance of a license issued under this Chapter.

(11) To employ an executive director and any additional professional, clerical, or special personnel necessary to carry out the provisions of this Chapter, and to purchase or rent necessary office space, equipment, and supplies.

(12) To adopt a seal.

(13) To carry out any other actions authorized by this Chapter.

(b) A member of the Board shall have the authority to inspect cosmetic art shops and cosmetic art schools at any reasonable hour to determine compliance with the provisions of this Chapter if the inspection is made: (i) at the request of the Board, or with the approval of the chair or the executive director as the result of a complaint made to the Board or a problem reported by an inspector, or (ii) at the request of an inspector who deems it necessary to request the assistance of a Board member and who has the prior approval of the chair or executive director to do so. A Board member who makes an inspection pursuant to this subsection shall file a report with the Board before requesting reimbursement for expenses.

(c) The Board shall keep a record of its proceedings relating to the issuance, renewal, denial, restriction, suspension, and revocation of licenses. This record shall also contain each licensee's name, business and home addresses, license number, and the date the license was issued.

"§ 88B-5. Meetings and compensation of the Board.

(a) Each member of the Board shall receive compensation for services and expenses as provided in G.S. 93B-5, but shall be limited to payment for services deemed official business of the Board when such business exceeds three continuous hours per day. Official business of the Board includes meetings called by the chair and time spent inspecting cosmetic art shops and schools as permitted by this Chapter. No payment for per diem or travel expenses shall be authorized or paid for Board meetings other than those called by the chair. The Board may annually select one member to attend a national state board of cosmetic arts meeting on official business of the Board. No other Board members shall be authorized to attend trade shows or to travel out of State at the Board's expense.

(b) The Board shall hold four regular meetings a year in the months of January, April, July, and October. The chair may call additional meetings whenever necessary.

"§ 88B-6. Board office, employees, funds, budget requirements.

(a) The Board shall maintain its office in Raleigh, North Carolina.

(b) The Board shall employ an executive director who shall not be a member of the Board. The executive director shall keep all records of the Board, issue all necessary notices, and perform any other duties required by the Board.

(c) With the approval of the Director of the Budget and the Office of State Personnel, the Board may employ as many inspectors, investigators, and other staff as necessary to perform inspections and other duties prescribed by the Board. Inspectors and investigators shall be experienced in all parts of cosmetic art and shall have authority to examine cosmetic art shops and cosmetic art schools during business hours to determine compliance with this Chapter.

(d) The salaries of all employees of the Board, including the executive director, shall be subject to the State Personnel Act.

(e) The executive director may collect in the Board's name and on its behalf the fees prescribed in this Chapter and shall turn these and any other monies paid to the Board over to the State Treasurer. These funds shall be credited to the Board and shall be held and expended under the supervision of the Director of the Budget only for the administration and enforcement of this Chapter. Nothing in this Chapter shall authorize any expenditure in excess of the amount credited to the Board and held by the State Treasurer as provided in this subsection.

(f) The Executive Budget Act and the State Personnel Act apply to the administration of this Chapter.

"§ 88B-7. Qualifications for licensing cosmetologists.

The Board shall issue a license to practice as a cosmetologist to any individual who meets all of the following requirements:

(1) Successful completion of at least 1,500 hours of a cosmetology curriculum in an approved cosmetic art school, or at least 1,200 hours of a cosmetology curriculum in an approved cosmetic art school and completion of an apprenticeship for a period of at least six months under the direct supervision of a cosmetologist, as certified by sworn affidavit of three licensed cosmetologists or by other evidence satisfactory to the Board.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ 88B-8. Qualifications for licensing apprentices.

The Board shall issue a license to practice as an apprentice to any individual who meets all of the following requirements:

(1) Successful completion of at least 1,200 hours of a cosmetology curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ 88B-9. Qualifications for licensing as an esthetician.

The Board shall issue a license to practice as an esthetician to any individual who meets all of the following requirements:

(1) Successful completion of at least 600 hours of an esthetician curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ 88B-10 Qualifications for licensing manicurists.

The Board shall issue a license to practice as a manicurist to any individual who meets all of the following requirements:

(1) Successful completion of at least 150 hours of a manicurist curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"**§ 88B-11. Qualifications for licensing teachers.**

(a) Applicants for any teacher's license issued by the Board shall meet all of the following requirements:

(1) Possession of a high school diploma or a high school graduation equivalency certificate.

(2) Payment of the fees required by G.S. 88B-20.

(b) The Board shall issue a license to practice as a cosmetology teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist license issued by the Board.

(2) Submits proof of either practice of cosmetic art in a cosmetic art shop for a period equivalent to five years of full-time work immediately prior to application or successful completion of at least 800 hours of a cosmetology teacher curriculum in an approved cosmetic art school.

(3) Passes an examination for cosmetology teachers conducted by the Board.

(c) The Board shall issue a license to practice as an esthetician teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist or an esthetician license issued by the Board.

(2) Submits proof of either practice as an esthetician in a cosmetic art shop for a period equivalent to three years of full-time work immediately prior to application or successful completion of at least 650 hours of an esthetician teacher curriculum in an approved cosmetic art school.

(3) Passes an examination for esthetician teachers conducted by the Board.

(d) The Board shall issue a license to practice as a manicurist teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist or manicurist license issued by the Board.

(2) Submits proof of either practice as a manicurist in a cosmetic art shop for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a manicurist teacher curriculum in an approved cosmetic art school.

(3) Passes an examination for manicurist teachers conducted by the Board.

"**§ 88B-12. Temporary employment permit; extensions; limits on practice.**

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, or manicurist who meets all of the following:

(1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.

(2) Has applied to take the examination within three months of completing the required hours.

(3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, or esthetician, as appropriate, and may not operate a cosmetic art shop.

"§ 88B-13. Applicants licensed in other states.

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, or manicurist in another state if the applicant shows:

(1) The applicant is an active practitioner in good standing.

(2) The applicant has practiced at least one out of the three years immediately preceding the application for a license.

(3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.

(4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach.

"§ 88B-14. Licensing of cosmetic art shops.

(a) The Board shall issue a license to operate a cosmetic art shop to any applicant who submits a properly completed application, on a form approved by the Board, pays the required fee, and is determined, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) The applicant shall list all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(c) A cosmetic art shop shall be allowed to operate for a period of 30 days while the Board inspects and determines the shop's compliance with this Chapter and the Board's rules. If the Board is unable to complete the inspection within 30 days, the shop will be authorized to operate until such an inspection can be completed.

(d) A license to operate a cosmetic art shop shall not be transferable from one location to another or from one owner to another.

"§ 88B-15. Practice outside cosmetic art shops.

(a) Any individual licensed under this Chapter may visit the residences of individuals who are sick or disabled and confined to their place of residence in order to attend to their cosmetic needs. A licensed individual may also visit hospitals, nursing homes, rest homes, retirement homes, mental institutions, correctional facilities, funeral homes, and similar institutions to attend to the cosmetic needs of those in these institutions.

(b) An individual licensed under this Chapter may practice in a licensed barbershop as permitted by G.S. 86A-14.

"§ 88B-16. Licensing cosmetic art schools.

(a) The Board shall issue a license to any cosmetic art school that submits a properly completed application, on a form approved by the Board, pays the required license fee, and is determined by the Board, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) No one may open or operate a cosmetic art school before the Board has approved a license for the school. The Board shall not issue a license before a cosmetic art school has been inspected and determined to be in compliance with the provisions of this Chapter and the Board's rules.

(c) Cosmetic art schools located in this State shall be licensed by the Board before any credit may be given for curriculum hours taken in the school. The Board may establish standards for approving hours from schools in other states that are licensed.

"§ 88B-17. Bond required for private cosmetic art schools.

(a) Each private cosmetic art school shall provide a guaranty bond unless the school has already provided a bond or an alternative to a bond under G.S. 115D-95. The Board may restrict, suspend, revoke, refuse to renew or reinstate the license of a school that fails to maintain a bond or an alternative to a bond pursuant to this section or G.S. 115D-95.

(b) (1) The applicant shall file the guaranty bond with the clerk of superior court in the county in which the school is located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student or the student's parent or guardian who has suffered loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services as related to course enrollment for any reason, including

suspension, revocation, or nonrenewal of a school's approval, bankruptcy, foreclosure, or the school ceasing to operate.

(2) The bond amount shall be at least equal to the maximum amount of prepaid tuition held at any time by the school during the last fiscal year, but in no case shall be less than ten thousand dollars ($10,000). Each application for license or license renewal shall include a letter signed by an authorized representative of the school showing the calculations made and the method of computing the amount of the bond in accordance with rules prescribed by the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

(3) The bond shall remain in force and effect until canceled by the guarantor. The guarantor may cancel the bond upon 30 days' notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(c) An applicant who is unable to secure a bond may seek from the Board a waiver of the guaranty bond requirement and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the Board, an applicant may file one of the following instead of a bond with the clerk of court in the county in which the school is located:

(1) An assignment of a savings account in an amount equal to the bond required that is in a form acceptable to the Board, and is executed by the applicant and a state or federal savings and loan association, state bank, or national bank that is doing business in this State and whose accounts are insured by a federal depositor's corporation, and access to the account is subject to the same conditions as those for a bond in subsection (b) of this section.

(2) A certificate of deposit that is executed by a state or federal savings and loan association, state bank, or national bank that is doing business in this State and whose accounts are insured by a federal depositor's corporation and access to the certificate of deposit is subject to the same conditions as those for a bond in subsection (b) of this section.

"**§ 88B-18. Examinations.**

(a) Each applicant for any examination shall file an application with the Board, on a form approved by the Board, which shall be verified by the applicant under oath, and the applicant shall pay the required examination fee. Applications shall be filed at least 30 days before the requested examination date.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in the Board's office or in a publicly supported two-year postsecondary educational institution with appropriate facilities. The Board shall reimburse an institution, if requested, for the use of its facilities in administering examinations.

(d) An applicant for a cosmetologist license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board.

"**§ 88B-19. Expired school credits.**

No credit shall be approved by the Board if five years or more have elapsed from the date a person enrolled in a cosmetic art school unless the person completed the required number of hours and filed an application to take an examination administered by the Board.

"**§ 88B-20. Fees required.**

(a) The Board may charge examination fees as follows:

(1)	Cosmetologist	$ 20.00
(2)	Apprentice	$ 5.00
(3)	Manicurist	$ 15.00
(4)	Esthetician	$ 20.00
(5)	Teacher	$ 25.00.

(b) The Board may charge application fees as follows:

(1)	Inspection of a newly established cosmetic art shop	$ 25.00
(2)	Reciprocity applicant under G.S. 88B-13	$ 15.00.

(c) The Board may charge license fees as follows:

(1)	Cosmetologist	$ 39.00 every 3 years
(2)	Apprentice	$ 10.00 per year
(3)	Esthetician	$ 10.00 per year
(4)	Manicurist	$ 10.00 per year
(5)	Teacher	$ 10.00 every 2 years
(6)	Cosmetic art shop per active booth per year	$ 3.00
(7)	Cosmetic art school	$ 50.00 per year
(8)	Duplicate license	$ 1.00.

(d) The Board may require payment of late fees and reinstatement fees as follows:

(1)	Apprentice, cosmetologist, esthetician, manicurist, and teacher late renewal	$ 10.00
(2)	Cosmetic art schools and shops late renewal	$ 10.00
(3)	Reinstatement - cosmetic art schools and shops	$ 25.00.

(e) The Board may prorate fees as appropriate.

"**§ 88B-21. Renewals; expired licenses.**

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a teacher's license, the teacher shall annually complete a minimum of eight hours of continuing education which shall be approved by the Board. Teachers shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection.

(f) If an apprentice, cosmetologist, esthetician, manicurist, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pay the license fee for each year that the fees are delinquent and to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

"**§ 88B-22. Licenses required; criminal penalty.**

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an esthetician or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this act is a Class 3 misdemeanor.

"§ 88B-23. Licenses to be posted.

(a) Every apprentice, cosmetologist, esthetician, manicurist, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works.

(b) Every certificate of license to operate a cosmetic art shop or school shall be conspicuously posted in the shop or school for which it is issued.

"§ 88B-24. Revocation of licenses and other disciplinary measures.

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

(1) Conviction of a felony shown by certified copy of the record of the court of conviction.

(2) Gross malpractice or gross incompetency as determined by the Board.

(3) Advertising by means of knowingly false or deceptive statements.

(4) Permitting any individual to practice cosmetic art without a license or temporary employment permit, with an expired license or temporary employment permit, or with an invalid license or temporary employment permit.

(5) Obtaining or attempting to obtain a license for money or other thing of value other than the required fee or by fraudulent misrepresentation.

(6) Practicing or attempting to practice by fraudulent misrepresentation.

(7) Willful failure to display a certificate of license as required by G.S. 88B-23.

(8) Willful violation of the rules adopted by the Board.

(9) Violation of G.S. 86A-15 by a cosmetologist, esthetician, or manicurist licensed by the Board and practicing cosmetic art in a barber shop.

"§ 88B-25. Exemptions.

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their professional duties:

(1) Undertakers and funeral establishments licensed under G.S. 90-210.25.

(2) Persons authorized to practice medicine or surgery under Chapter 90 of the General Statutes.

(3) Nurses licensed under Chapter 90 of the General Statutes.
(4) Commissioned medical or surgical officers of the United States Army, Air Force, Navy, Marine, or Coast Guard.
(5) A person employed in a cosmetic art shop to shampoo hair.

"**§ 88B-26. Rules to be posted.**

(a) The Board shall furnish a copy of its rules relating to sanitary management of cosmetic art shops and cosmetic art schools to each shop and school licensed by the Board. Each shop and school shall post the rules in a conspicuous place.

(b) The Board shall furnish a copy of its rules relating to curriculum and schools to each licensed cosmetic art school. Each cosmetic art school shall make these rules available to all teachers and students.

"**§ 88B-27. Inspections.**

Any inspector or other authorized representative of the Board may enter any cosmetic art shop or school to inspect it for compliance with this Chapter and the Board's rules. All persons practicing cosmetic art in a shop or school shall, upon request, present satisfactory proof of identification. Satisfactory proof shall be in the form of a photographic driver's license or photographic identification card issued by any state, federal, or other government entity. The Board may require a cosmetic art shop or school to be inspected as a condition for license renewal.

"**§ 88B-28. Restraining orders.**

The Board, the Department of Human Resources, or any county or district health director may apply to the superior court for an injunction to restrain any person from violating the provisions of this Chapter or the Board's rules. Actions under this section shall be brought in the county where the defendant resides or maintains his or her principal place of business or where the alleged acts occurred.

"**§ 88B-29. Civil penalties.**

(a) Authority to Assess Civil Penalties. -- In addition to taking any of the actions permitted under G.S. 88B-24, the Board may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(b) Consideration Factors. -- Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.
(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
(3) Whether the violation was willful and malicious.
(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. -- The Board shall establish a schedule of civil penalties for violations of this Chapter. The schedule shall indicate for each type of violation whether the violation can be corrected. Penalties shall be assessed for the

first, second, and third violations of specified sections of this Chapter and for specified rules.

(d) Costs. -- The Board may in a disciplinary proceeding charge costs, including reasonable attorneys' fees, to the licensee against whom the proceedings were brought."

Section 2.1. G.S. 88B-10, as enacted by this act, reads as rewritten:

"**§ 88B-10 Qualifications for licensing manicurists.**

The Board shall issue a license to practice as a manicurist to any individual who meets all of the following requirements:

(1) Successful completion of at least ~~150~~ 300 hours of a manicurist curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20."

Section 2.2. G.S. 86A-14 reads as rewritten:

"**§ 86A-14. Persons exempt from the provisions of this Chapter.**

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their duties:

(1) Persons authorized under the laws of the State to practice medicine and surgery, and those working under their supervision;

(2) Commissioned medical or surgical officers of the U.S. Army or other components of the U.S. armed forces, and those working under their supervision;

(3) Registered nurses and licensed practical nurses and those working under their supervision;

(4) Licensed embalmers and funeral directors and those working under their supervision;

(5) Persons who are working in licensed cosmetic shops or beauty schools and are licensed by the State Board of Cosmetic Art Examiners pursuant to Chapter ~~88~~ 88B of the General Statutes; and

(6) Persons who are working in licensed barber shops and are licensed by the State Board of Cosmetic Art Examiners pursuant to Chapter ~~88~~ 88B of the General Statutes, provided that those persons shall comply with G.S. 86A-15."

Section 3. Any esthetician who submits proof to the Board that the esthetician is actively engaged in the practice of esthetics on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-9, as enacted by Section 2 of this act. A cosmetic art shop that practices esthetics only and that submits proof to the Board that the shop is actively engaged in the practice of esthetics on the effective date of this act, shall have one year from the date of this act to comply with the requirements in G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the

Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 4. Any manicurist who submits proof to the Board that the manicurist is actively engaged in the practice of manicuring on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-10, as enacted by Section 2 of this act. A cosmetic art shop that practices manicuring only and that submits proof to the Board that the shop is actively engaged in the practice of manicuring on the effective date of this act, shall have one year from the date of this act to comply with the requirements in G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 5. Until the Board adopts a staggered license renewal plan under G.S. 88B-21(b), as enacted by Section 2 of this act, any cosmetologist who applies for licensure in a year other than the year all other cosmetologist licenses are due for renewal shall pay the annual fee provided in G.S. 88B-20, as enacted by Section 2 of this act, on or before October 1 of each year until the year all other cosmetologist licenses are again due for renewal. Any license not renewed shall expire on October 1 of that year.

Section 6. Any license currently issued by the State Board of Cosmetic Art Examiners shall remain valid until its expiration.

Section 7. The State Board of Cosmetic Art Examiners existing on the effective date of this act shall continue in effect until the terms of the members expire or a member is removed as authorized in G.S. 88B-3, as enacted by Section 2 of this act. Vacancies on the Board shall be filled as authorized in G.S. 88B-3, as enacted by Section 2 of this act. The rules of the State Board of Cosmetic Art Examiners in effect on the effective date of this Chapter shall continue in effect until amended.

Section 8. Nothing in this Chapter shall require the North Carolina Board of Cosmetic Art Examiners to issue esthetician's licenses until the General Assembly enacts legislation allowing the Board to charge an examination fee of twenty dollars ($20.00) and a license fee of ten dollars ($10.00) per year.

Section 9. G.S. 14-400 reads as rewritten:

"**§ 14-400. ~~Tattooing~~ Tattooing; body piercing prohibited.**

(a) It shall be unlawful for any person or persons to tattoo the arm, limb, or any part of the body of any other person under 18 years of age. Anyone violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(b) It shall be unlawful for any person to pierce any part of the body other than ears of another person under the age of 18 for the purpose of allowing the insertion of earrings, jewelry, or similar objects into the body, unless the prior consent of a custodial parent or guardian is obtained. Anyone violating the provisions of this section is guilty of a Class 2 misdemeanor."

PART II. CREATE THE NC MASSAGE AND BODYWORK THERAPY PRACTICE ACT.

Section 10. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 36.

"Massage and Bodywork Therapy Practice.

"§ 90-620. Short title.

This Article shall be known as the North Carolina Massage and Bodywork Therapy Practice Act.

"§ 90-621. Declaration of purpose.

The General Assembly recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapy is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.

"§ 90-622. Definitions.

The following definitions apply in this Article:

(1) Board. -- The North Carolina Board of Massage and Bodywork Therapy.

(2) Board-approved school. -- Any massage and bodywork therapy school or training program in this State or another state that has met the criteria established by the Board.

(3) Massage and bodywork therapy. -- Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:

a. Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.

b. Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.

c. The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.

(4) Massage and bodywork therapist. -- A person licensed under this Article.

(5) Practice of massage and bodywork therapy. -- The application of massage and bodywork therapy to any person for a fee or other consideration. 'Practice of massage and bodywork therapy' does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"§ 90-623. License required.

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including 'massage therapist', 'bodywork therapist', 'masseur', 'masseuse', 'massagist', 'somatic practitioner', 'body therapist', 'structural integrator', or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term 'massage therapist' or 'bodywork therapist' or any other term that implies a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title 'Licensed Massage and Bodywork Therapist'. No other person shall assume this title or use an abbreviation or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

"§ 90-624. Exemptions.

Nothing in this Article shall be construed to prohibit or affect:

(1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.

(2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(3) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under this Article.

(4) Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.

(5) A person giving massage and bodywork therapy to members of that person's immediate family.

(6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

(7) The practice of techniques that are specifically intended to affect the human energy field.

b"**§ 90-625. North Carolina Board of Massage and Bodywork Therapy.**

(a) The North Carolina Board of Massage and Bodywork Therapy is created. The Board shall consist of seven members who are residents of this State and are as follows:

(1) Five members shall be massage and bodywork therapists who have been licensed under this Article and have been in the practice of massage and bodywork therapy for at least five of the last seven years prior to their serving on the Board. The appointments shall be made from lists provided by the North Carolina Therapeutic Massage and Bodywork Task Force. Consideration shall be given to geographical distribution, practice setting, clinical specialty, and other factors that will promote diversity of the profession on the Board. One of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and three shall be appointed by the Governor.

(2) The remaining two members shall be members of the general public who shall not be licensed under this Article or the spouse of a person who is so licensed, or have any financial interest, direct or indirect, in the profession regulated. One of these members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member of the Board shall serve for a term of three years, ending on June 30 of the last year of the term. A member shall not be appointed to serve more than two consecutive terms.

(d) The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business but no less than twice a year. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

"**§ 90-626. Powers and duties.**

The Board shall have the following powers and duties:

(1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage and bodywork therapy practice.
(2) Evaluate the qualifications of applicants for licensure under this Article.
(3) Issue, renew, deny, suspend, or revoke licenses under this Article.
(4) Reprimand or otherwise discipline licensees under this Article.
(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.
(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.
(7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.
(8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.
(9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board, including rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapy establishments. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.
(10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.
(11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.
(12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.
(13) Provide a system for grievances to be presented and resolved.

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective.

"**§ 90-627. Custody and use of funds.**

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article.

"**§ 90-628. Expenses and fees.**

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the General Fund.

(b) The Board may impose the following fees up to the amounts listed below:

(1)	Application for examination	$200.00
(2)	License fee	150.00
(3)	License renewal	100.00
(4)	Late renewal penalty	75.00
(5)	License by reciprocity	50.00
(6)	Duplicate license	25.00
(7)	Provisional license	150.00.

"**§ 90-629. Requirements for licensure.**

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

(1) Has obtained a high school diploma or equivalent.

(2) Is 18 years of age or older.

(3) Is of good moral character as determined by the Board.

(4) Has successfully completed a course of study consisting of a minimum of 500 classroom hours of supervised instruction at a Board-approved school.

(5) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board.

"**§ 90-630. Reciprocity.**

(a) An applicant shall be eligible for licensure if (i) the applicant has been licensed in another state within five years of the application to the Board and the other state has standards for massage and bodywork therapists that are substantially equivalent to those in this State; (ii) the applicant holds a current certification from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets NCCA standards; or (iii) the applicant meets special requirements established by the Board.

(b) Upon receipt of an application for reciprocity, the Board shall contact each jurisdiction that has previously certified or licensed the applicant to determine whether there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

(c) Reciprocity may not be granted if the state in which the applicant is licensed has not granted a similar reciprocity to licensees in this State.

"**§ 90-631. Massage and bodywork therapy schools.**

The Board shall establish rules for the approval of massage and bodywork therapy schools. These rules shall include:

(1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapy.

(2) Standards for faculty and learning resources.

(3) Requirements for reporting changes in instructional staff and curriculum.

(4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapy may make application for approval to the Board. The Board shall grant approval to schools, whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved schools.

"**§ 90-632. License renewal and continuing education.**

The license to practice under this Article shall be renewed every two years. When renewing a license, each licensee shall submit to the Board evidence of the successful completion of at least 25 hours of study, as approved by the Board, during the immediately preceding two years, in the practice of massage and bodywork therapy.

"**§ 90-633. Disciplinary action.**

The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) The use of drugs or intoxicating liquors to an extent that affects professional competency.

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.

(4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.

(5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules.

(7) The commission of an act of malpractice, gross negligence, or incompetency.

(8) Practice as a licensee under this Article without a valid certificate or renewal.

(9) Engaging in conduct that could result in harm or injury to the public.

(10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapy without successfully completing training approved by the Board in that specialty.

"§ 90-634. Enforcement; injunctive relief.

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

(1) Practice of massage and bodywork therapy.

(2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.

(3) Use any title descriptive of any branch of massage and bodywork therapy, as provided in G.S. 90-623, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action.

"§ 90-635. Third-party reimbursement.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article.

"§ 90-636. Regulation by county or municipality.

Nothing in this Article shall be construed to prohibit a county or municipality from regulating persons covered by this Article, however, a county or municipality may not impose regulations that are inconsistent with this Article."

Section 12. Notwithstanding the provisions of G.S. 90-625(a), as enacted in Section 10 of this act, the terms of initial appointments to the North Carolina Board of Massage and Bodywork Therapy shall be as follows:

(1) The terms of the three members appointed by the Governor pursuant to G.S. 90-625(a)(1), as enacted in Section 10 of this act, shall expire June 30, 2001.

(2) The terms of all other members shall expire June 30, 2000.

Section 13. The five initial appointments to the North Carolina Board of Massage and Bodywork Therapy pursuant to G.S. 90-625(a)(1), as enacted in Section 10 of this act, shall satisfy all of the provisions of G.S. 90-625(a)(1), except the licensure requirement, and shall satisfy the provisions of G.S. 90-629(1) through (4), as enacted in Section 10 of this act, except the 500 classroom hours of supervised instruction does not have to be in a curriculum that meets the basic guidelines established by the North Carolina Board of Massage and Bodywork Therapy.

Section 14. If an applicant does not meet the educational or examinations requirements in G.S. 90-629(4) and (5), as enacted in Section 10 of this act, then for a maximum period of two years after the effective date of this act, the Board may permanently waive those requirements and grant a provisional license to the applicant. At the end of two years after the granting of the provisional license, the applicant shall submit evidence to the Board of his or her compliance with the continuing education requirements in G.S. 90-632, as enacted in Section 10 of this act. Upon receipt of proper documentation, the applicant shall be issued a license to practice massage and bodywork therapy. An applicant for a provisional license shall meet the requirements set forth in G.S. 90-629 (1) through (3), as enacted in Section 10 of this act, and shall submit all of the following for consideration by the Board:

(1) Documentation that the applicant has been engaged in the professional practice of massage and bodywork therapy for a minimum of four years prior to the application to the Board.

(2) Documentation of a minimum of 500 hours of professional practice in the field of massage and bodywork therapy during the four years prior to the application to the Board.

(3) Verification that the applicant has been practicing in the State at the time the application is submitted.

(4) Three letters of reference from sources approved by the Board attesting to the sound moral character, professional qualifications, and competence of the applicant.

PART III. EFFECTIVE DATES.

Section 15. Sections 1 through 8 of this act become effective October 1, 1998, and apply to applications made and acts occurring on or after that date, except that Section 2.1 of this act shall become effective January 1, 1999. Section 9 of this act becomes effective December 1, 1998, and applies to offenses committed on or after that date. Sections 10 through 14 of this act become effective October 1, 1998, and apply to offenses occurring on or after that date. The remainder of this act becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 916
Second Edition Engrossed 5/22/97

Short Title: Cosmetologists. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS REGULATING COSMETIC ART.

The General Assembly of North Carolina enacts:

Section 1. Chapter 88 of the General Statutes is repealed.

Section 2. The General Statutes are amended by adding the following new Chapter to read:

"Chapter 88B.

"Cosmetic Art.

"**§ 88B-1. Short title.**

This act shall be known and may be cited as the North Carolina Cosmetic Art Act.

"**§ 88B-2. Definitions.**

The following definitions apply in this Chapter:

(1) Apprentice. -- A person who is not a manager or operator, and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.

(2) Board. -- The North Carolina Board of Cosmetic Art Examiners.

(3) Booth. -- A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.

(4) Booth renter. -- A person who rents a booth in a cosmetic art shop.

(5) Cosmetic art. -- All or any part or combination of: (i) the systematic massaging with the hands or mechanical apparatus of

the scalp, face, neck, shoulders, hands, and feet; (ii) the use of cosmetic chemicals and preparations and antiseptics; (iii) manicuring, including the application of artificial nails; (iv) esthetics; or (v) cutting, coloring, cleansing, arranging, dressing, waving, and marcelling the hair, and the use of electricity for stimulating growth of hair.

(6) Cosmetic art shop. -- Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.

(7) Cosmetic art school. -- Any building or part thereof where cosmetic art is taught.

(8) Cosmetologist. -- Any individual who is licensed to practice all parts of cosmetic art.

(9) Cosmetology teacher. -- An individual licensed by the Board to teach all parts of cosmetic art.

(10) Esthetician. -- An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.

(11) Esthetician teacher. -- An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.

(12) Manicurist. -- An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.

(13) Manicuring. -- The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term 'manicuring' shall not include the treatment of pathologic conditions.

(14) Manicurist teacher. -- An individual licensed by the Board to teach manicuring.

(15) Shampooing. -- The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair.

"§ 88B-3. Creation and membership of the Board; term of office; removal for cause; officers.

(a) The North Carolina Board of Cosmetic Art Examiners is established. The Board shall consist of six members who shall be appointed as follows:

(1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a cosmetologist.

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a cosmetologist.

(3) The Governor shall appoint two cosmetologists, a cosmetology teacher, and a member of the public who is not licensed under this Chapter.

(b) Each cosmetologist member shall have practiced all parts of cosmetic art in this State for at least five years immediately preceding appointment to the Board and

shall not have any connection with any cosmetic art school while serving on the Board. The cosmetology teacher member shall be currently employed as a teacher by a North Carolina public school, community college, or other public or private cosmetic art school and shall have practiced or taught cosmetic art for at least five years immediately preceding appointment to the Board.

(c) Cosmetologist members of the Board shall serve staggered terms of three years. No Board member shall serve more than two consecutive terms, except that each member shall serve until a successor is appointed and qualified. All other board members shall serve three-year terms, but they shall not be staggered.

(d) The Governor may remove any member of the Board for cause.

(e) A vacancy shall be filled in the same manner as the original appointment, except that unexpired terms in seats appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(f) The Board shall elect a chair, a vice-chair, and other officers as deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(g) The Board shall not issue a teacher's license to any Board member during that member's term on the Board.

(h) No Board member may be employed by the Board for at least one year after that member's term expires.

"**§ 88B-4. Powers and duties of the Board.**

(a) The Board shall have the following powers and duties:

(1) To administer and interpret this Chapter.

(2) To adopt, amend, and repeal rules to carry out the provisions of this Chapter.

(3) To examine and determine the qualifications and fitness of applicants for licensure under this Chapter.

(4) To issue, renew, deny, restrict, suspend, or revoke licenses.

(5) To conduct investigations of alleged violations of this Chapter or the Board's rules.

(6) To collect fees required by G.S. 88B-20 and any other monies permitted by law to be paid to the Board.

(7) To approve new cosmetic art schools.

(8) To inspect cosmetic art schools and shops.

(9) To adopt rules for the sanitary management and physical requirements of cosmetic art shops and cosmetic art schools.

(10) To establish a curriculum for each course of study required for the issuance of a license issued under this Chapter.

(11) To employ an executive director and any additional professional, clerical, or special personnel necessary to carry out the provisions

of this Chapter, and to purchase or rent necessary office space, equipment, and supplies.

(12) To adopt a seal.

(13) To carry out any other actions authorized by this Chapter.

(b) A member of the Board shall have the authority to inspect cosmetic art shops and cosmetic art schools at any reasonable hour to determine compliance with the provisions of this Chapter if the inspection is made: (i) at the request of the Board, or with the approval of the chair or the executive director as the result of a complaint made to the Board or a problem reported by an inspector, or (ii) at the request of an inspector who deems it necessary to request the assistance of a Board member and who has the prior approval of the chair or executive director to do so. A Board member who makes an inspection pursuant to this subsection shall file a report with the Board before requesting reimbursement for expenses.

(c) The Board shall keep a record of its proceedings relating to the issuance, renewal, denial, restriction, suspension, and revocation of licenses. This record shall also contain each licensee's name, business and home addresses, license number, and the date the license was issued.

"§ 88B-5. Meetings and compensation of the Board.

(a) Each member of the Board shall receive compensation for services and expenses as provided in G.S. 93B-5, but shall be limited to payment for services deemed official business of the Board when such business exceeds three continuous hours per day. Official business of the Board includes meetings called by the chair and time spent inspecting cosmetic art shops and schools as permitted by this Chapter. No payment for per diem or travel expenses shall be authorized or paid for Board meetings other than those called by the chair. The Board may annually select one member to attend a national state board of cosmetic arts meeting on official business of the Board. No other Board members shall be authorized to attend trade shows or to travel out of State at the Board's expense.

(b) The Board shall hold four regular meetings a year in the months of January, April, July, and October. The chair may call additional meetings whenever necessary.

"§ 88B-6. Board office, employees, funds, budget requirements.

(a) The Board shall maintain its office in Raleigh, North Carolina.

(b) The Board shall employ an executive director who shall not be a member of the Board. The executive director shall keep all records of the Board, issue all necessary notices, and perform any other duties required by the Board.

(c) With the approval of the Director of the Budget and the Office of State Personnel, the Board may employ as many inspectors, investigators, and other staff as necessary to perform inspections and other duties prescribed by the Board. Inspectors and investigators shall be experienced in all parts of cosmetic art and shall have authority to examine cosmetic art shops and cosmetic art schools during business hours to determine compliance with this Chapter.

(d) The salaries of all employees of the Board, including the executive director, shall be subject to the State Personnel Act.

(e) The executive director may collect in the Board's name and on its behalf the fees prescribed in this Chapter and shall turn these and any other monies paid to the Board over to the State Treasurer. These funds shall be credited to the Board and shall be held and expended under the supervision of the Director of the Budget only for the administration and enforcement of this Chapter. Nothing in this Chapter shall authorize any expenditure in excess of the amount credited to the Board and held by the State Treasurer as provided in this subsection.

(f) The Executive Budget Act and the State Personnel Act apply to the administration of this Chapter.

"§ 88B-7. Qualifications for licensing cosmetologists.

The Board shall issue a license to practice as a cosmetologist to any individual who meets all of the following requirements:

(1) Successful completion of at least 1,500 hours of a cosmetology curriculum in an approved cosmetic art school, or at least 1,200 hours of a cosmetology curriculum in an approved cosmetic art school and completion of an apprenticeship for a period of at least six months under the direct supervision of a cosmetologist, as certified by sworn affidavit of three licensed cosmetologists or by other evidence satisfactory to the Board.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ 88B-8. Qualifications for licensing apprentices.

The Board shall issue a license to practice as an apprentice to any individual who meets all of the following requirements:

(1) Successful completion of at least 1,200 hours of a cosmetology curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ 88B-9. Qualifications for licensing as an esthetician.

The Board shall issue a license to practice as an esthetician to any individual who meets all of the following requirements:

(1) Successful completion of at least 600 hours of an esthetician curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ 88B-10. Qualifications for licensing manicurists.

The Board shall issue a license to practice as a manicurist to any individual who meets all of the following requirements:

(1) Successful completion of at least 300 hours of a manicurist curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ 88B-11. Qualifications for licensing teachers.

(a) Applicants for any teacher's license issued by the Board shall meet all of the following requirements:

(1) Possession of a high school diploma or a high school graduation equivalency certificate.

(2) Payment of the fees required by G.S. 88B-20.

(b) The Board shall issue a license to practice as a cosmetology teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist license issued by the Board.

(2) Submits proof of either practice of cosmetic art in a cosmetic art shop for a period equivalent to five years of full-time work immediately prior to application or successful completion of at least 800 hours of a cosmetology teacher curriculum in an approved cosmetic art school.

(3) Passes an examination for cosmetology teachers conducted by the Board.

(c) The Board shall issue a license to practice as an esthetician teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist or an esthetician license issued by the Board.

(2) Submits proof of either practice as an esthetician in a cosmetic art shop for a period equivalent to three years of full-time work immediately prior to application or successful completion of at least 650 hours of an esthetician teacher curriculum in an approved cosmetic art school.

(3) Passes an examination for esthetician teachers conducted by the Board.

(d) The Board shall issue a license to practice as a manicurist teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist or manicurist license issued by the Board.

(2) Submits proof of either practice as a manicurist in a cosmetic art shop for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a manicurist teacher curriculum in an approved cosmetic art school.

(3) Passes an examination for manicurist teachers conducted by the Board.

"**§ 88B-12. Temporary employment permit; extensions; limits on practice.**

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, or manicurist who meets all of the following:

(1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.
(2) Has applied to take the examination within three months of completing the required hours.
(3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, or esthetician, as appropriate, and may not operate a cosmetic art shop.

"§ 88B-13. Applicants licensed in other states.

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, or manicurist in another state if the applicant shows:
(1) The applicant is an active practitioner in good standing.
(2) The applicant has practiced at least one out of the three years immediately preceding the application for a license.
(3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.
(4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach.

"§ 88B-14. Licensing of cosmetic art shops.

(a) The Board shall issue a license to operate a cosmetic art shop to any applicant who submits a properly completed application, on a form approved by the Board, pays the required fee, and is determined, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) The applicant shall list all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(c) A cosmetic art shop shall be allowed to operate for a period of 30 days while the Board inspects and determines the shop's compliance with this Chapter and the Board's rules. If the Board is unable to complete the inspection within 30 days, the shop will be authorized to operate until such an inspection can be completed.

(d) A license to operate a cosmetic art shop shall not be transferable from one location to another or from one owner to another.

"§ 88B-15. Practice outside cosmetic art shops.

(a) Any individual licensed under this Chapter may visit the residences of individuals who are sick or disabled and confined to their place of residence in order to attend to their cosmetic needs. A licensed individual may also visit hospitals, nursing homes, rest homes, retirement homes, mental institutions, correctional facilities, funeral homes, and similar institutions to attend to the cosmetic needs of those in these institutions.

(b) An individual licensed under this Chapter may practice in a licensed barbershop as permitted by G.S. 86-15.

"§ 88B-16. Licensing cosmetic art schools.

(a) The Board shall issue a license to any cosmetic art school that submits a properly completed application, on a form approved by the Board, pays the required license fee, and is determined by the Board, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) No one may open or operate a cosmetic art school before the Board has approved a license for the school. The Board shall not issue a license before a cosmetic art school has been inspected and determined to be in compliance with the provisions of this Chapter and the Board's rules.

(c) Cosmetic art schools located in this State shall be licensed by the Board before any credit may be given for curriculum hours taken in the school. The Board may establish standards for approving hours from schools in other states that are licensed.

"§ 88B-17. Bond required for private cosmetic art schools.

(a) Each private cosmetic art school shall provide a guaranty bond unless the school has already provided a bond or an alternative to a bond under G.S. 115D-95. The Board may restrict, suspend, revoke, refuse to renew or reinstate the license of a school that fails to maintain a bond or an alternative to a bond pursuant to this section or G.S. 115D-95.

(b) (1) The applicant shall file the guaranty bond with the clerk of superior court in the county in which the school is located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student or the student's parent or guardian who has suffered loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services as related to course enrollment for any reason, including suspension, revocation, or nonrenewal of a school's approval, bankruptcy, foreclosure, or the school ceasing to operate.

(2) The bond amount shall be at least equal to the maximum amount of prepaid tuition held at any time by the school during the last fiscal year, but in no case shall be less than ten thousand dollars

($10,000). Each application for license or license renewal shall include a letter signed by an authorized representative of the school showing the calculations made and the method of computing the amount of the bond in accordance with rules prescribed by the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

(3) The bond shall remain in force and effect until canceled by the guarantor. The guarantor may cancel the bond upon 30 days' notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(c) An applicant who is unable to secure a bond may seek from the Board a waiver of the guaranty bond requirement and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the Board, an applicant may file one of the following instead of a bond with the clerk of court in the county in which the school is located:

(1) An assignment of a savings account in an amount equal to the bond required that is in a form acceptable to the Board, and is executed by the applicant and a state or federal savings and loan association, state bank, or national bank that is doing business in this State and whose accounts are insured by a federal depositor's corporation, and access to the account is subject to the same conditions as those for a bond in subsection (b) of this section.

(2) A certificate of deposit that is executed by a state or federal savings and loan association, state bank, or national bank that is doing business in this State and whose accounts are insured by a federal depositor's corporation and access to the certificate of deposit is subject to the same conditions as those for a bond in subsection (b) of this section.

"§ 88B-18. Examinations.

(a) Each applicant for any examination shall file an application with the Board, on a form approved by the Board, which shall be verified by the applicant under oath, and the applicant shall pay the required examination fee. Applications shall be filed at least 30 days before the requested examination date.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in the Board's office or in a publicly supported two-year postsecondary educational institution with appropriate facilities. The Board shall reimburse an institution, if requested, for the use of its facilities in administering examinations.

(d) An applicant for a cosmetologist license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board.

"§ 88B-19. Expired school credits.

No credit shall be approved by the Board if five years or more have elapsed from the date a person enrolled in a cosmetic art school unless the person completed the required number of hours and filed an application to take an examination administered by the Board.

"§ 88B-20. Fees required.

(a) The Board may charge examination fees as follows:

(1)	Cosmetologist	$ 20.00
(2)	Apprentice	$ 5.00
(3)	Manicurist	$ 15.00
(4)	Esthetician	$ 20.00
(5)	Teacher	$ 25.00.

(b) The Board may charge application fees as follows:

(1)	Inspection of a newly established cosmetic art shop	$ 25.00
(2)	Reciprocity applicant under G.S. 88B-13	$ 15.00.

(c) The Board may charge license fees as follows:

(1)	Cosmetologist	$ 39.00 every 3 years
(2)	Apprentice	$ 10.00 per year
(3)	Esthetician	$ 10.00 per year
(4)	Manicurist	$ 10.00 per year
(5)	Teacher	$ 10.00 every 2 years
(6)	Cosmetic art shop per active booth per year	$ 3.00
(7)	Cosmetic art school	$ 50.00 per year
(8)	Duplicate license	$ 1.00.

(d) The Board may require payment of late fees and reinstatement fees as follows:

(1)	Apprentice, cosmetologist, esthetician, manicurist, and teacher late renewal	$ 10.00
(2)	Cosmetic art schools and shops late renewal	$ 10.00
(3)	Reinstatement - cosmetic art schools and shops	$ 25.00.

(e) The Board may prorate fees as appropriate.

"§ 88B-21. Renewals; expired licenses.

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the

reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a teacher's license, the teacher shall annually complete a minimum of eight hours of continuing education which shall be approved by the Board. Teachers shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection.

(f) If an apprentice, cosmetologist, esthetician, manicurist, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pay the license fee for each year that the fees are delinquent and to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

"**§ 88B-22. Licenses required; criminal penalty.**

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an esthetician or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this act is a Class 3 misdemeanor.

"**§ 88B-23. Licenses to be posted.**

(a) Every apprentice, cosmetologist, esthetician, manicurist, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works.

(b) Every certificate of license to operate a cosmetic art shop or school shall be conspicuously posted in the shop or school for which it is issued.

"**§ 88B-24. Revocation of licenses and other disciplinary measures.**

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

(1) Conviction of a felony shown by certified copy of the record of the court of conviction.

(2) Gross malpractice or gross incompetency as determined by the Board.

(3) Advertising by means of knowingly false or deceptive statements.

(4) Permitting any individual to practice cosmetic art without a license or temporary employment permit, with an expired license or temporary employment permit, or with an invalid license or temporary employment permit.

(5) Obtaining or attempting to obtain a license for money or other thing of value other than the required fee or by fraudulent misrepresentation.

(6) Practicing or attempting to practice by fraudulent misrepresentation.

(7) Willful failure to display a certificate of license as required by G.S. 88B-23.

(8) Willful violation of the rules adopted by the Board.

(9) Violation of G.S. 86-15 by a cosmetologist, esthetician, or manicurist licensed by the Board and practicing cosmetic art in a barber shop.

"**§ 88B-25. Exemptions.**

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their professional duties:

(1) Undertakers and funeral establishments licensed under G.S. 90-210.25.

(2) Persons authorized to practice medicine or surgery under Chapter 90 of the General Statutes.

(3) Nurses licensed under Chapter 90 of the General Statutes.

(4) Commissioned medical or surgical officers of the United States Army, Air Force, Navy, Marine, or Coast Guard.

(5) A person employed in a cosmetic art shop to shampoo hair.

"**§ 88B-26. Rules to be posted.**

(a) The Board shall furnish a copy of its rules relating to sanitary management of cosmetic art shops and cosmetic art schools to each shop and school licensed by the Board. Each shop and school shall post the rules in a conspicuous place.

(b) The Board shall furnish a copy of its rules relating to curriculum and schools to each licensed cosmetic art school. Each cosmetic art school shall make these rules available to all teachers and students.

"**§ 88B-27. Inspections.**

Any inspector or other authorized representative of the Board may enter any cosmetic art shop or school to inspect it for compliance with this Chapter and the Board's rules. All persons practicing cosmetic art in a shop or school shall, upon request, present satisfactory proof of identification. Satisfactory proof shall be in the form of a photographic driver's license or photographic identification card issued by any state, federal, or other government entity. The Board may require a cosmetic art shop or school to be inspected as a condition for license renewal.

"**§ 88B-28. Restraining orders.**

The Board, the Department of Human Resources, or any county or district health director may apply to the superior court for an injunction to restrain any person from violating the provisions of this Chapter or the Board's rules. Actions under this section shall be brought in the county where the defendant resides or maintains his or her principal place of business or where the alleged acts occurred.

"**§ 88B-29. Civil penalties.**

(a) Authority to Assess Civil Penalties. -- In addition to taking any of the actions permitted under G.S. 88B-24, the Board may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(b) Consideration Factors. -- Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. -- The Board shall establish a schedule of civil penalties for violations of this Chapter. The schedule shall indicate for each type of violation whether the violation can be corrected. Penalties shall be assessed for the first, second, and third violations of specified sections of this Chapter and for specified rules.

(d) Costs. -- The Board may in a disciplinary proceeding charge costs, including reasonable attorneys' fees, to the licensee against whom the proceedings were brought."

Section 3. Any esthetician who submits proof to the Board that the esthetician is actively engaged in the practice of esthetics on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-9, as enacted by Section 2 of this act. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 4. Any manicurist who submits proof to the Board that the manicurist is actively engaged in the practice of manicuring on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-10, as enacted by Section 2 of this act. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 5. Until the Board adopts a staggered license renewal plan under G.S. 88B-21(b), as enacted by Section 2 of this act, any cosmetologist who applies for licensure in a year other than the year all other cosmetologist licenses are due for renewal shall pay the annual fee provided in G.S. 88B-20, as enacted by Section 2 of this act, on or before October 1 of each year until the year all other cosmetologist licenses are again due for renewal. Any license not renewed shall expire on October 1 of that year.

Section 6. Any license currently issued by the State Board of Cosmetic Art Examiners shall remain valid until its expiration.

Section 7. The State Board of Cosmetic Art Examiners existing on the effective date of this act shall continue in effect until the terms of the members expire or a member is removed as authorized in G.S. 88B-3, as enacted by Section 2 of this act. Vacancies on the Board shall be filled as authorized in G.S. 88B-3, as enacted by Section 2 of this act. The rules of the State Board of Cosmetic Art Examiners in effect on the effective date of this Chapter shall continue in effect until amended.

Section 8. Nothing in this Chapter shall require the North Carolina Board of Cosmetic Art Examiners to issue esthetician's licenses until the General Assembly enacts legislation allowing the Board to charge an examination fee of twenty dollars ($20.00) and a license fee of ten dollars ($10.00) per year.

Section 9. G.S. 14-400 reads as rewritten:

"**§ 14-400. ~~Tattooing~~ Tattooing; body piercing prohibited.**

(a) It shall be unlawful for any person or persons to tattoo the arm, limb, or any part of the body of any other person under 18 years of age. Anyone violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(b) It shall be unlawful for any person to pierce any part of the body other than ears of another person under the age of 18 for the purpose of allowing the insertion of earrings, jewelry, or similar objects into the body, unless the prior consent of a custodial parent or guardian is obtained. Anyone violating the provisions of this section is guilty of a Class 2 misdemeanor."

Section 10. Section 9 of this act becomes effective December 1, 1997, and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 1997, and applies to applications made and acts occurring on or after that date.

EXPLANATION OF SENATE BILL 916(PCS):
Cosmetology and Massage Therapy

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 19, 1998
SPONSOR: Senator Kerr

Part I of Senate Bill 916 creates new chapter 88B (N.C. Cosmetic Art Act) and repeals Chapter 88(Cosmetic Art). The majority of Part I rewrites the current law. Changes to current law include requirement for licensure of all manicurists and manicure shops , creation of a separate license for estheticians, setting out statutory standards for teachers, easing the requirements for obtaining a license when one is licensed in another state, and applying late penalties to all licenses.

88B-2 sets out definitions

88B-3 creates the N.C. Board of Cosmetic Art Examiners with 6 members:

1 cosmetologist recommended by President Pro Tem of Senate
2 cosmetologist recommended by Speaker of House
2 cosmetologists, one cosmetology teacher, and one member of the public appointed by the Governor.

88B-4 Powers and duties of Board. A member has authority to inspect cosmetic art shops and schools at reasonable hour if inspection is made (i) at request of Board or with approval of chair or executive director as the result of complaint made to Board or problem reported by inspector or (ii) at request of inspector who deems it necessary to request assistance of Board member.

88B-5 Meetings and compensation of Board. Allows per diem and reimbursement for travel expenses. There are to be 4 regular meetings a year.

88B-6 Board office, employees, funds, budget requirements. Board office will be maintained in Raleigh, and Executive Director may collect fees of the Board and turn them over to State Treasurer. These funds will be credited to Board and held and expended under the supervision of the director of the Budget only for the administration and enforcement of Chapter.

88B-7 Qualifications for licensing cosmetologists.

(1) 1,500 hrs cosmetology curriculum in cosmetic art school, or at least 1,200 hrs curriculum and apprenticeship for at least 6 months under direct supervision of a cosmetologist

(2) Passage of examination conducted by Board

(3) Payment of fees required by G.S. 88B-20.

88B-8 Qualifications for licensing apprentices

(1) 1,200 hrs cosmetology curriculum in cosmetic art school.

(2) Passage of examination conducted by Board.

(3) Payment of fees required by G.S. 88B-20.

88B-9 Qualifications for licensing as an esthetician

(1) 600 hrs esthetician curriculum in cosmetic art school

(2) Passage of examination conducted by Board

(3) Payment of fees required by G.S. 99B-20

88B-10 Qualifications for licensing manicurists

(1) 300 (was 150)hrs manicurist curriculum in cosmetic art school

(2) Passage of examination conducted by Board

(3) Payment of fees required by G.S. 88B-20.

88B-11 Qualifications for licensing teachers

(1) high school diploma or equivalency certificate

(2) payment of fees required by G.S. 88B-20

In addition to the above two requirements, the following requirements are required for licensure as a teacher:

cosmetology teacher - cosmetology license, either practice of cosmetic art for 5 years of full-time work or 800 hours of cosmetology teacher curriculum in cosmetic art school, and passes Board examination for cosmetology teachers.

Esthetician teacher - esthetician license, either practice as an esthetician for 3 years or 650 hours of esthetician teacher curriculum in cosmetic art school, and passes Board examination for esthetician.

Manicurist teacher - either a cosmetologist or manicurist license, proof of either practice as manicurist for two years or 320 hours of manicurist teacher curriculum in cosmetic art school, and passes board examination.

88B-12 Temporary employment permit; extensions; limits on practice. The Board may issue temporary employment permit to applicant for licensure as an apprentice, cosmetologist, esthetician, or manicurist, if the applicant meets all of the following requirements:

(1) completed required hours of cosmetic art school curriculum.

(2) applied to take exam within 3 months of completing required hours.

(3) Is qualified to take examination.

A temporary employment permit is only valid for six months from the date of graduation from cosmetic art school. The holder of the license must practice under the supervision of a person licensed in the holder's field for application of licensure

88B-13 Applicants licensed in other states. The Board will issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, or manicurist in another state if the applicant shows:

(1) applicant is active practitioner in good standing

(2) applicant practiced at least one of the three years preceding application

(3) No disciplinary proceeding or unresolved complaint pending.

(4) The licensure requirements in the state where the applicant is licensed are substantially equivalent to those required by NC.

An applicant may be admitted to practice in NC under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to person licensed in NC

88B-14 Licensing of cosmetic art shops. Applicant must list all licensed cosmetologists who practice cosmetic art in the shop and must identify each as an employee or booth operator. The shop will be allowed to operate until an inspection can be completed.

88B-15. Practice outside cosmetic art shops. A licensed individual may attend to the cosmetic needs of individuals outside cosmetic art shops. A licensed individual may also practice in a licensed barbershop

88B-16. Licensing cosmetic art schools. License not issued until cosmetic art school has been inspected and determined to be in compliance with Chapter.

88B-17. Bond required for private cosmetic art schools. Each private cosmetic art school must provide a guaranty bond or alternative to a bond. The guaranty bond must be filed with the clerk of superior court in the county where the school is located and is in favor of the students. The bond is to provide indemnification for loss of tuition or any fees due to failure of the school to offer or complete instruction, academic services. The amount of the bond must be equal to at least the maximum amount of prepaid tuition held by the school during the last fiscal year, but the amount may not be less than $10,000. In lieu of the guaranty bond, the school may seek a waiver from the Board and file with the clerk of superior court an assignment of a savings account equal to the amount of the required bond or a certificate of deposit.

88B-18. Examinations. Applications must be filed at least 30 days before requested examination date and the examination must be given in at least 3 locations in the State that are geographically scattered. <u>An applicant for a cosmetologist license who fails the examination three times, may not reapply until the applicant has completed any additional requirements prescribed by the Board.</u>

88B-19 Expired school credits. No credit shall be approved by the Board if five years or more have elapsed from the date a person enrolled in a cosmetic art school unless the person completed the required number of hours and filed an application to take an examination administered by the Board.

88B-20. Fee required. This sections sets out the examination fees, application fees, licensed fees, late fees, and reinstatement fees.

88B-21. Renewals; expired licenses.

<u>License renewal</u>	<u>Expiration Date</u>
cosmetic shop by Feb 1 each year	March 1 each year
cosmetologist by Oct 1 every 3 years	Oct 1
apprentice, esthetician, & manicurist by Oct 1 each year	Oct 1

teacher by Oct 1 every two years	Oct 1
cosmetic art school by Oct 1 each year	Nov 1

An apprentice, cosmetologist, esthetician, manicurist, or teacher who fails to renew a license within five years of the expiration date, is required to pay the license fee for each year that the fees are delinquent and to pass an examination before the license will be reinstated.

88B-22. Licenses required; criminal penalty.

88B-23. Licenses to be posted.

88B-24. Revocation of licenses and other disciplinary measures. The Board may restrict revoke, refuse to issue, renew, or reinstate a licensee for conviction of a felony, gross malpractice or incompetency, false or deceptive advertising, practice, willful failure to display a certificate of license, willful violation of Board rules, and violation of G.S. 86A-15. Causes are added.

88B-25. Exemptions.

88B-26. Rules to be posted. Rules relating to sanitary management of cosmetic art shops and schools must be posted in a conspicuous place.

88B-27. Inspections. A cosmetic art shop or school may be inspected by any inspector or other authorized representative of the Board.

88B-28. Restraining orders. The Board, DHR, or a county or district health director may seek an injunction to restrain a person from violating the Chapter or Board rules.

88B-29 Civil penalties. The Board may assess a civil penalty of up to $1,000 for violating the Chapter or rules of the Board. The civil penalties shall be remitted to the school fund of the county where the violation occurred. Certain factors will be considered by the Board before it imposes a civil penalty. The Board will establish a schedule of civil penalties. The Board may charge costs, including attorneys fees to the licensee in a disciplinary proceeding.

Section 3 and 4 provide that an esthetician or manicurist who proves to the Board that they are actively engaged in the practice of their art on the date of the act, who passes the Board's examination, and pays the required fee, will be licensed without satisfying the requirements for curriculum hours. A cosmetic art shop practicing only manicuring or esthetics at the time of the act will have one year to comply with the licensure requirements

Section 6. Any license currently issued by the State Board of Cosmetic Art Examiners shall remain valid until its expiration.

Section 9. Under current law the tattooing of a person under 18 is a Class 2 misdemeanor. This section makes the piercing of any body part, other than ears, of a person under 18 for the purpose of insertion of earrings, jewelry or similar objects, without first obtaining the consent of a custodial parent or guardian, a Class 2 misdemeanor.

Part II of the bill creates the "North Carolina Massage and Bodywork Therapy Practice Act." The Act's purpose is to require mandatory licensure of persons engaged in the practice of massage and bodywork therapy to ensure minimum standards of competency and to protect the public health, safety, and welfare. Under current law, a "massage business" is covered by the criminal laws for adult establishments, and is considered an adult establishment if it is "any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors." The only other statutory references to massage is language exempting simple massages and the operation of health clubs from licensure under the physical therapy act and language including massage as an adjunctive therapy under acupuncture.

The Act prohibits persons from practicing or holding themselves out as massage and bodywork therapists without licensure from the newly created North Carolina Board of Massage and Bodywork Therapy. The Act defines "massage and bodywork therapy" as systems of activities applied to soft tissues of the body for therapeutic, educational, or relaxation purposes. The Act also prohibits a person from adopting or using any title or description including "massage therapist", "bodywork therapist", "masseur", "masseuse", "massagist", "somatic practitioner", "body therapist", "structural integrator", or any derivation of those terms unless the person is licensed under the Act.

The practice does not include: diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

The Act does not prohibit: the practice of a profession by one licensed, certified or registered under other N.C. laws, the practice of massage and bodywork therapy by a person licensed elsewhere when that person is called into the State to teach a course or to consult with a person licensed under the Act, students enrolled in a Board approved school and completing a clinical requirement under the supervision of a licensed person, a person giving therapy to members of the person's immediate family, and the practice of movement educators such as dance teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

The requirements of licensure are:

- •high school diploma or equivalent
- •18 years or older
- •good moral character as determined by the Board
- •successful completion of a minimum of 500 classroom hours of supervised instruction at a Board approved school
- •passing an examination administered by an agency approved by the National Commission of Certifying Agencies or an examination administered or approved by the Board.

The schedule of fees for licensure may be no more than the following amounts:

(1)	Application for examination	$200.00
(2)	License fee	150.00
(3)	License renewal (every two years)	100.00
(4)	Late renewal penalty	75.00
(5)	License by reciprocity	100.00
(6)	Duplicate license	25.00
(7)	Provisional license	150.00

Salaries, expenses, or other Board obligations will be paid out of the above fees.

The Board consists of seven members: five to be licensed under the Article and with at least five years' experience, except that the initial five do not have to be licensed or have completed 500 hours of the required supervised instruction. The remaining two members will be from the general public. The five therapists will be appointed from a list provided by the NC Therapeutic Massage and Bodywork Task Force.

The Act sets out powers and duties of the Board and lists reasons a Board may deny, suspend, revoke, or refuse a license. The Board may seek to enjoin anyone who violates the Act. There is no requirement for direct third-party reimbursement to licensees.

For two years after effective date of the Act, a provisional license may be granted to an applicant who does not meet educational or examination requirements for licensure. At the end of two years after the granting of the provisional license, the applicant must submit evidence of compliance with the continuing education requirements (at least 25 hours of study). The applicant will then be issued a license.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 916 (House Finance Committee Substitute)

SHORT TITLE: Cosmetology and Massage Therapy

SPONSOR(S):

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
NC Board of Cosmetic Art Examiners					
Special Revenue Fund	$26,250	$23,875	$26,375	$27,375	$29,375
NC Board of Massage and Bodywork Therapy					
Special Revenue Fund	$225,000	$154,000	$304,000	$198,000	$348,000
EXPENDITURES	To be Determined by the Boards				
POSITIONS:	To be Determined by the Boards				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Board of Massage and Bodywork Therapy; NC Board of Cosmetic Art Examiners

EFFECTIVE DATE: Sections 1 through 8 (Cosmetic Art Examiners) are effective October 1, 1998, except for GS 88B-10 in section 2 (manicurists) that is effective January 1, 1999. Section 9 (Body piercing) is effective December 1, 1998. Sections 10 through 14 (Massage and Bodywork Therapy) are effective October 1, 1998. The remainder of the act is effective when it becomes law.

BILL SUMMARY: Part one of the bill rewrites the General Statutes dealing with Cosmetic Art Act. Of fiscal importance, required fees in 88B-20 were amended to (1) create a new exam and license fee for an Esthetician, (2) establish a charge for a duplicate license, (3) expand late fees to apprentice, esthetician, manicurist, teacher and cosmetic art schools, and (4) expand the

reinstatement fee to cosmetic art schools. Part two of the bill creates the NC Massage and Bodywork Therapy Practice Act. The bill (1) requires mandatory licensure of persons engaged in the practice of massage and bodywork therapy, (2) creates a Board of Massage and Bodywork Therapy to oversee licensing, and (3) sets fees for exams and licenses.

ASSUMPTIONS AND METHODOLOGY:

Part One - Cosmetic Art

The new license created by this act is for Estheticians or skin care specialists. SB 916 sets an exam fee of $20 and an annual license fee of $10. The Executive Secretary of the State Board of Cosmetic Art Examiners estimates that 500 persons will apply for the Esthetician exam in FY 1998-99. The Executive Secretary projects that 250 will apply in both 1999-00 and 2000-01, then the number will drop to 200 in each of the next two fiscal years. He sees much demand for this license because it requires fewer hours (600 versus 1200) than a cosmetologist.

Another new fee is $1 for a duplicate license. The Board produced 518 duplicate licenses in FY 1996-97. This fiscal note assumes that 500 duplicate licenses will be produced each year. Assuming duplicate requests are distributed throughout the year, the October 1 effective date in FY 1998-99 will reduce the first year request to 375.

Cosmetologists pay a $10 fee for late renewal of licenses. The Board reports that 20% of cosmetologists pay a late fee each year. This bill expands the late fee to apprentices, estheticians, manicurists, and teachers. If you apply the 20% rate to the 5,000 persons in these four groups, then the Board can expect 1,000 persons to pay a late fee each year.

Another group currently paying a late fee is cosmetic art shops. The late fee is $10 and the reinstatement fee for being 30 days late is $25. The Board reports that 27% of the shops are always 30 days late in renewing their licenses. This act expands the late and reinstatement fees to cosmetic art schools. The Board projects that 25 of the 115 schools will be late with payments each year and will pay $35 each.

The projected revenue from these fee changes is as follows:

		98-99	99-00	00-01	01-02	02-03
Esthetician Exam	$20	$10,000	$5,000	$5,000	$4,000	$4,000
Esthetician License	$10	$5,000	$7,500	$10,000	$12,000	$14,000
Duplicate License	$1	$375	$500	$500	$500	$500
Late Fees	$10/$25	$10,875	$10,875	$10,875	$10,875	$10,875
Total		**$26,250**	**$23,875**	**$26,375**	**$27,375**	**$29,375**

Part Two - Massage and Bodywork Therapy

Proposed GS 90-628 establishes the maximum fees for the North Carolina Board of Massage and Bodywork Therapy. In order to estimate the potential income generated by SB 916, this fiscal note assumes the maximum fees listed in the bill will be adopted by the Board.

Rick Rosen, co-director of the Body Therapy Institute, estimates there are 2,000 massage professionals in North Carolina currently eligible for licensure under this bill. However, Mr. Rosen estimates that only 1,500 will initially apply for licensure. Of this number, 800 are certified by the National Certification Board for Therapeutic Massage and Bodywork. The remaining 700 massage professionals will be given provisional licenses until they complete 25 hours of continuing education within two years. New entrants into this field will come from the 11 massage therapy schools located across the state from Asheville to Wilmington. Each school graduates an average of 40 students per year. If all graduates stay in North Carolina and apply for licensure, then 440 exams will be given each year by the Board. Assuming all pass the exam, then 440 new professionals will be licensed each year. To give the Board time to develop the exam process, this note assumes FY 99-00 will be the first year of exams for new graduates into the profession. Based on these factors, the chart below calculates the fiscal impact of the bill.

			98-99	99-00	00-01	01-02	02-03
License/Prov. License							
Certified	800	$150	$120,000				
Uncertified	700	$150	$105,000				
New Grads	440/yr	$150		$66,000	$66,000	$66,000	$66,000
Renewal		$100			$150,000	$44,000	$194,000
Exam	440/yr	$200		$88,000	$88,000	$88,000	$88,000
Total			**$225,000**	**$154,000**	**$304,000**	**$198,000**	**$348,000**

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: August 18, 1998

Dear Representative Clary,

Re: Massage & Bodywork Therapy Act

Thank you for the opportunity to speak.

My name is Emily Neal and I have been a Massage and Bodywork Therapist for 14 years.

My first massage training was a non-certified course sponsored by the University of North Carolina, Asheville, in Buncombe County where massage was, at that time, illegal.

But now I have trained in Stockholm, Sweden for Swedish Massage, have 3 certifications in Russian Medical Massage, 5 trainings in Trager Bodywork, 2 trainings in Lymphatic Drainage Massage, and others. My many trainings have cost more than $40,000.

Teaching is not my preference but I've assisted Trager trainings, taught at Carolina School of Massage in Carborro, and instructed Couples Massage at the Asheville/Buncombe Technical College.

For the last decade Rev. Billy Graham has been my client. When his associate, Rev. T.W. Wilson, contacted me, Dr. Graham had just been diagnosed with Parkinson's disease by doctors at the Mayo Clinic. Those doctors prescribed Swedish Massage, twice a week, to include non-resistant movements resembling Trager Bodywork. Mayo Clinic even sent me diagrams describing preferred moves. These treatments were in addition to Physical Therapy treatments which were administered to Dr. Graham at the clinic. His reaction to each of my treatments is noticeably positive.

People come to my office in pain and as a result of mywork, leave without it.

Massage consists, primarily, of non-resistant movements applied to the muscular system. The various bodywork modalities accomplish a healing condition which no other health care professional is equipped to accomplish.

I am 71 yeaars old, haave lived all around the world as a banker's wife and have 3 sons. But my last 14 years as a Massage and Bodywork Therapist have been the happiest years of my life. I used to say that I would retire at age 82 but I'm close enough to that age that I now say 92.

All that is missing is the dignity of licensensure as described in House Bill 1077, being presented at this time.

Please vote for this bill. It will benefit client as well as therapist.

Thank you, again, for the opportunity to speak with you.

Sincerely,

Emily Neal

NCPTA

North Carolina Physical Therapy Association, Inc.
a chapter of the American Physical Therapy Association
3900 Barrett Drive #212 ▪ Raleigh, NC 27609

August 10, 1998

Honorable Lyons Gray, Chairman
Committee on Finance
North Carolina House of Representatives
Legislative Office Building
Raleigh, NC 27601

Re: HB 1077 - Massage & Bodywork Therapies Licensing - - -
Opposition by the North Carolina Physical Therapy Association

Dear Representative Gray:

On behalf of the North Carolina Physical Therapy Association, by this letter we would like to express strong opposition to HB 1077 - Massage & Bodywork Therapies Licensing. We hope that you will recognize that HB 1077 is not needed to allow reasonable levels of bodywork and massage practice, and that if passed it would contribute to rising health care costs and allow persons who do not have adequate training to be licensed by the State as initial entry health care practitioners. (This bill is almost identical to legislation from previous Sessions, HB 910-Massage Therapy Practice in 1993, and HB 998 - Bodywork therapies Practice in 1995, and both of those bills were defeated.) I am told that HB 1077 has been ruled ineligible for consideration in the "Short" Session, but I am concerned that there may be some effort to circumvent the Session-limit-Rules.

HB 1077's proponents have urged passage of this and predecessor legislation in order to establish a new "health care discipline", and to assist in providing treatment to persons with "injury" and "illness".[1] Supporters have said that patients should go to bodyworkers or massage therapists for treatment of some medical problems, rather than to physical therapists, because they are "faster", "more expert", etc.[1] In our view, while bodywork and massage practitioners as defined in HB 1077 may be very capable of providing massage for relaxation or recreational purposes (such as in YMCAs, YWCAs, health clubs, etc.), they have only very limited education and training, and they are not by any stretch of logic or reason qualified to be primary health care providers.

Only medical doctors or other providers with genuine medical training should be licensed to be points-of-entry into our health care system. Massage therapists and other bodyworkers are not required to be educated to recognize complex medical problems and the

[1]Report to the Legislative Committee on New Licensing Boards, 1993 N.C. General Assembly, Legislative Task Force of Massage Therapists, American Massage Therapy Association - N.C. Chapter.

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bill does not require physician referral. Furthermore, assertions by proponents that "massage therapy can be paid by insurance"[2] show that there will unquestionably be additional third party health care costs from this bill.

In North Carolina, physical therapists receive their education and training at the University of North Carolina at Chapel Hill, Duke University, East Carolina University, Winston-Salem State University, Elon College, and Western Carolina University, all hospital based programs -- in or associated with major medical centers. Physical therapists receive thousands of hours of medical education, including cadaver studies and intensive clinical work. In contrast, massage therapy schools in North Carolina are licensed as proprietary "trade schools" by the Department of Community Colleges (they have no connection with Community Colleges' allied health education programs), and these schools do not offer any hospital experience or genuine medical-clinical training. HB 1077 would set minimum qualifications for bodywork and massage therapy licensing as: 18-years old, high school graduation or equivalent, and 500 hours of training (three to six months in a trade school). Materials supplied by proponents of HB 1077 indicate that the 500 hours of training includes 300 hours on massage methods, 100 hours on anatomy and physiology, and 100 hours on First Aid/CPR and additional courses. Clearly, 100 hours of anatomy and physiology (that could be taken in a single 5 week course) is not sufficient to allow the recipient to diagnose or recognize medical conditions that should not be treated by massage -- conditions such as infectious disease, cancer, cardiac problems, or fractured bones. Most proponents of HB 1077 candidly admit that massage therapists should not treat these conditions.[2]

Bodywork and massage therapists may be very qualified to provide simple massage, but they should not be licensed as independent health care disciplines by the State of North Carolina. Bodywork and massage therapists should not be approved and encouraged as health care providers without medical practitioner referral and supervision. In this time of government struggles with rising health care costs, a new cost element should not be endorsed.

Thank you for your consideration. We hope you will not support HB 1077!

Sincerely,

William Potter
Attorney and Lobbyist
Telephone: 919-828-0684

Louise Yurko, PT
Association President
Telephone: 919-247-2738

Mary Connor, PT
Legislation Coordinator
Telephone: 704-487-5225

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[2]Report to the Legislative Committee on New Licensing Boards, 1993 N.C. General Assembly, Legislative Task Force of Massage Therapists, American Massage Therapy Association - N.C. Chapter.

Withdrawn

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 916

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S916-ARBX-8/19

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [YES]
S916-CSLA-001

Representative Howard

moves to amend the bill on page 1, line 2, by inserting a comma after the word "ART" and by deleting the word "AND";

and on page 1, line 3, by inserting immediately before the period the following ", AND TO INCREASE THE PROCESS AND FACILITIES FEES IN THE GENERAL COURT OF JUSTICE.";

and on page 23, line 23, by inserting the following new sections:

"PART III. INCREASE COURT FEES.

Section 16. G.S. 7A-304(a) reads as rewritten:

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

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 916

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S916-ARBX-8/19 Page 2 of __

(2) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve dollars ($12.00) in the district court, 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 ($15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

(6) For support of the General Court of Justice, for the issuance by the clerk of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2, the sum of fifty dollars ($50.00), to be remitted to the State Treasurer. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee."

Section 17. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve

dollars ($12.00) in cases heard before a magistrate, and the sum of ~~ten dollars ($10.00)~~ sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which 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 in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of fifty-five dollars ($55.00) in the superior court, and the sum of forty dollars ($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 shall be remitted to the State Treasurer."

Section 18. G.S. 7A-306(a) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00)~~ ten dollars ($10.00) to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(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 shall be remitted to the State Treasurer."

Section 19. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00),~~ ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(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 collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ten dollars ($10.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of fifteen dollars ($15.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of seventeen dollars ($17.00)."

Section 20. G.S. 7A-311(a) reads as rewritten:

"(a) In a civil action or special proceeding, the following fees and commissions shall be assessed, collected, and remitted to the county:

(1) a. ~~Effective October 1, 1990, for every civil action filed on or after that date, for~~ For each item of civil ~~process,~~ process served, including summons, subpoenas, notices, motions, orders, writs and ~~pleadings served,~~ pleadings, the sum of ~~five dollars ($5.00).~~ ten dollars ($10.00). When two or more items of civil process are served simultaneously on one party, only one ~~five dollar ($5.00)~~ ten dollar ($10.00) fee shall be charged.

b. When an item of civil process is served on two or more persons or organizations, a separate service charge shall be made for each person or organization. If the process is served, or attempted to be served, by a city policeman, the fee shall be remitted to the city rather than the county. If the process is served, or attempted to be served by the sheriff, the fee shall be

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remitted to the county. This subsection shall not apply to service of summons to jurors.

(2) For the seizure of personal property and its care after seizure, all necessary expenses, in addition to any fees for service of process.

(3) For all sales by the sheriff of property, either real or personal, or for funds collected by the sheriff under any judgment, five percent (5%) on the first five hundred dollars ($500.00), and two and one-half percent (2 1/2%) on all sums over five hundred dollars ($500.00), plus necessary expenses of sale. Whenever an execution is issued to the sheriff, and subsequently while the execution is in force and outstanding, and after the sheriff has served or attempted to serve such execution, the judgment, or any part thereof, is paid directly or indirectly to the judgment creditor, the fee herein is payable to the sheriff on the amount so paid. The judgment creditor shall be responsible for collecting and paying all execution fees on amounts paid directly to the judgment creditor.

(4) For execution of a judgment of ejectment, all necessary expenses, in addition to any fees for service of process.

(5) For necessary transportation of individuals to or from State institutions or another state, the same mileage and subsistence allowances as are provided for State employees."";

and on page 23, line 24, by deleting "PART III." and substituting "PART IV.";

and on page 23, line 25, by deleting "Section 15." and substituting "Section 20";

and on page 23, line 30, by inserting immediately before the word "The" the following:
"PART III of this act becomes effective October 1, 1998, and applies to fees assessed or paid on or after that date."

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Principal Clerk)

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Withdrawn

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Date_____,1998

Comm. Sub. [YES]
Amends Title []

moves to amend the bill on page 4, lines 20 through 33, by rewriting those lines to read:

"**§ 88B-5. Meetings and compensation of the Board.**

(a) Each member of the Board shall be limited to payment under this section for services deemed official business of the Board when such business exceeds three continuous hours per day. Official business of the Board includes meetings called by the chair and time spent inspecting cosmetic art shops and schools as permitted by this Chapter. No payment for per diem or travel expenses shall be authorized or paid for Board meetings other than those called by the chair. The Board may annually select one member to attend a national state board of cosmetic arts meeting on official business of the Board. No other Board members shall be authorized to attend trade shows or to travel out of State at the Board's expense.

(b) Board members shall receive as compensation for their services per diem not to exceed one hundred dollars ($100.00) for each day during which they are engaged in the official business of the board.

(c) Except as provided herein board members shall not be paid a salary or receive any additional compensation for services rendered as members of the board.

(d) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

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Principal Clerk)

(1) For transportation by privately owned automobile, the business standard mileage rate set by the Internal Revenue Service per mile of travel and the actual cost of tolls paid. Any other law which sets a mileage rate by referring to the rate set herein, instead establishes a rate of twenty-five cents (25¢) per mile. No reimbursement shall be made for the use of a personal car in commuting from an employee's home to his duty station in connection with regularly scheduled work hours. Any designation of an employee's home as his duty station by a department head shall require prior approval by the Office of State Budget and Management on an annual basis.

(2) For bus, railroad, Pullman, or other conveyance, actual fare.

(3) For expenses incurred for subsistence, payment of seventy-one dollars ($71.00) per day when traveling in-state or eighty-three dollars ($83.00) per day when traveling out-of-state. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget. Reimbursement to State employees for lunches eaten while on official business may be made only in the following circumstances:

a. When an overnight stay is required reimbursement is allowed while an employee is in travel status;

b. When the cost of the lunch is included as part of a registration fee for a formal congress, conference, assembly, or convocation, by whatever name called. Such assembly must involve the active participation of persons other than the employees of a single State department, institution, or agency and must be necessary for conducting official State business; or

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c. When the State employee is a member of a State board, commission, committee, or council which operates from funds deposited with the State Treasurer, and the lunch is preplanned as part of the meeting for the entire board, commission, committee, or council.

(4) For convention registration fees not to exceed thirty dollars ($30.00) per convention.

(e) Actual expenditures of board members in excess of the maximum amounts set forth in this section for travel and subsistence may be reimbursed if the prior approval of the State Director of Budget is obtained and such approved expenditures are within the established and published uniform standards and criteria of the State Director of Budget authorized under subsection (g) of this section for extraordinary charges for hotels, meals, and convention registration for State officers and employees, whenever such charges are the result of required official business of the Board.

(f) Reimbursement of actual costs of overnight lodging, whether in-state or out-of-state, must be documented by a receipt of actual lodging expenses from a commercial establishment. This documentation shall be attached to the reimbursement request. All reimbursement requests shall be filed for approval and payment within 30 days after the travel period for which the reimbursement is being requested.

(g) Expenditures in excess of the maximum amounts set forth in this section for travel and subsistence may be reimbursed if the prior approval of the department head is obtained. The Director of the Budget shall establish and publish uniform standards and criteria under which actual expenses in excess of the travel and subsistence allowances and convention registration fees as prescribed in this section may be authorized by department heads for extraordinary charges for hotel, meals, and registration, whenever such charges are the result of required official business.

(h) The Board shall hold four regular meetings a year in the months of January, April, July, and October. The chair may call additional meetings whenever necessary."

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further moves to amend the bill on page 18, lines 36 and 37, by deleting those lines, by renumbering subsection (f) as subsection (e) on page 18, line 38, and by adding the following between lines 41 and 42 on page 18:

"**§ 90-625.1 Meetings and compensation of the Board.**

(a) Board members shall receive as compensation for their services per diem not to exceed one hundred dollars ($100.00) for each day during which they are engaged in the official business of the board.

(b) Except as provided herein board members shall not be paid a salary or receive any additional compensation for services rendered as members of the board.

(c) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

(1) For transportation by privately owned automobile, the business standard mileage rate set by the Internal Revenue Service per mile of travel and the actual cost of tolls paid. Any other law which sets a mileage rate by referring to the rate set herein, instead establishes a rate of twenty-five cents (25¢) per mile. No reimbursement shall be made for the use of a personal car in commuting from an employee's home to his duty station in connection with regularly scheduled work hours. Any designation of an employee's home as his duty station by a department head shall require prior approval by the Office of State Budget and Management on an annual basis.

(2) For bus, railroad, Pullman, or other conveyance, actual fare.

(3) For expenses incurred for subsistence, payment of seventy-one dollars ($71.00) per day when traveling in-state or eighty-three dollars ($83.00) per day when traveling out-of-state. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with

regulations and criteria which shall be promulgated and published by the Director of the Budget. Reimbursement to State employees for lunches eaten while on official business may be made only in the following circumstances:

a. When an overnight stay is required reimbursement is allowed while an employee is in travel status;

b. When the cost of the lunch is included as part of a registration fee for a formal congress, conference, assembly, or convocation, by whatever name called. Such assembly must involve the active participation of persons other than the employees of a single State department, institution, or agency and must be necessary for conducting official State business; or

c. When the State employee is a member of a State board, commission, committee, or council which operates from funds deposited with the State Treasurer, and the lunch is preplanned as part of the meeting for the entire board, commission, committee, or council.

(4) For convention registration fees not to exceed thirty dollars ($30.00) per convention.

(d) Actual expenditures of board members in excess of the maximum amounts set forth in this section for travel and subsistence may be reimbursed if the prior approval of the State Director of Budget is obtained and such approved expenditures are within the established and published uniform standards and criteria of the State Director of Budget authorized under subsection (f) of this section for extraordinary charges for hotels, meals, and convention registration for State officers and employees, whenever such charges are the result of required official business of the Board.

(e) Reimbursement of actual costs of overnight lodging, whether in-state or out-of-state, must be documented by a receipt of actual lodging expenses from a commercial establishment. This documentation shall be attached to the reimbursement request. All reimbursement requests shall be filed for approval and payment within 30 days

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after the travel period for which the reimbursement is being requested.

(f) Expenditures in excess of the maximum amounts set forth in this section for travel and subsistence may be reimbursed if the prior approval of the department head is obtained. The Director of the Budget shall establish and publish uniform standards and criteria under which actual expenses in excess of the travel and subsistence allowances and convention registration fees as prescribed in this section may be authorized by department heads for extraordinary charges for hotel, meals, and registration, whenever such charges are the result of required official business.

SIGNED Liston Ramsey
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. _____ DATE _____

S. B. No. 916 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 16, line 1 through page 23, line 22

(X) WHICH CHANGES THE TITLE

by deleting those lines

further moves to amend the bill on page 23 line 29-30 by deleting the sentence beginning on line 29

further moves to amend the bill on page 23 line 24 by deleting "II" and substituting "III"

further moves to amend the bill on page 1 lines 2 and 3 by deleting "AND TO REGULATE THE PRACTICE OF MASSAGE AND BODYWORK THERAPY"

SIGNED _____

ADOPTED Miller FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 916 PCS-001 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Cunningham
Sen.)

moves to amend the bill on page 9, line 43

( ) WHICH CHANGES THE TITLE

by inserting the following at the end of that line to read:

"If an applicant is a non-English speaking individual, then the ~~written portion of the~~ examination shall be provided in the applicant's native language or an interpreter or translator must be provided to assist the applicant in taking the examination."

and on page 20, line 29, by inserting the following at the end of that line to read:

"If an applicant is a non-English speaking individual, then the examination shall be provided in the applicant's native language or an interpreter or translator must be provided to assist the applicant in taking the ~~examination~~."

SIGNED _____

Withdrawn

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 916 PCS-001 Amendment No. _____
(to be filled in by Principal Clerk)

Rep.) Decker
Sen.)

moves to amend the bill on page 15, line 39 and 40,

by deleting the phrase "other than ears".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

withdrawn

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 916
Second Edition Engrossed 5/22/97
Proposed House Committee Substitute S916-PCS4710-LA001

Short Title: Cosmetology and Massage Therapy. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS REGULATING COSMETIC ART AND TO REGULATE THE PRACTICE OF MASSAGE AND BODYWORK THERAPY.

The General Assembly of North Carolina enacts:

PART I. REWRITE OF THE NC COSMETIC ART ACT.

Section 1. Chapter 88 of the General Statutes is repealed.

Section 2. The General Statutes are amended by adding the following new Chapter to read:

"Chapter 88B.

"Cosmetic Art.

"§ 88B-1. Short title.

This act shall be known and may be cited as the North Carolina Cosmetic Art Act.

"§ 88B-2. Definitions.

The following definitions apply in this Chapter:

(1) Apprentice. -- A person who is not a manager or operator and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.

(2) Board. -- The North Carolina Board of Cosmetic Art Examiners.

(3) Booth. -- A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.

(4) Booth renter. -- A person who rents a booth in a cosmetic art shop.

(5) Cosmetic art. -- All or any part or combination of: (i) the systematic massaging with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet; (ii) the use of cosmetic chemicals and preparations and antiseptics; (iii) manicuring, including the application of artificial nails; (iv) esthetics; or (v) cutting, coloring, cleansing, arranging, dressing, waving, and marcelling the hair, and the use of electricity for stimulating growth of hair.

(6) Cosmetic art shop. -- Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.

(7) Cosmetic art school. -- Any building or part thereof where cosmetic art is taught.

(8) Cosmetologist. -- Any individual who is licensed to practice all parts of cosmetic art.

(9) Cosmetology teacher. -- An individual licensed by the Board to teach all parts of cosmetic art.

(10) Esthetician. -- An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.

(11) Esthetician teacher. -- An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.

(12) Manicurist. -- An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.

(13) Manicuring. -- The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term 'manicuring' shall not include the treatment of pathologic conditions.

(14) Manicurist teacher. -- An individual licensed by the Board to teach manicuring.

(15) Shampooing. -- The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair.

"§ 88B-3. Creation and membership of the Board; term of office; removal for cause; officers.

(a) The North Carolina Board of Cosmetic Art Examiners is established. The Board shall consist of six members who shall be appointed as follows:

(1) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a cosmetologist.

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a cosmetologist.

(3) The Governor shall appoint two cosmetologists, a cosmetology teacher, and a member of the public who is not licensed under this Chapter.

(b) Each cosmetologist member shall have practiced all parts of cosmetic art in this State for at least five years immediately preceding appointment to the Board and shall not have any connection with any cosmetic art school while serving on the Board. The cosmetology teacher member shall be currently employed as a teacher by a North Carolina public school, community college, or other public or private cosmetic art school and shall have practiced or taught cosmetic art for at least five years immediately preceding appointment to the Board.

(c) Cosmetologist members of the Board shall serve staggered terms of three years. No Board member shall serve more than two consecutive terms, except that each member shall serve until a successor is appointed and qualified. All other board members shall serve three-year terms, but they shall not be staggered.

(d) The Governor may remove any member of the Board for cause.

(e) A vacancy shall be filled in the same manner as the original appointment, except that unexpired terms in seats appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(f) The Board shall elect a chair, a vice-chair, and other officers as deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(g) The Board shall not issue a teacher's license to any Board member during that member's term on the Board.

(h) No Board member may be employed by the Board for at least one year after that member's term expires.

"**§ 88B-4. Powers and duties of the Board.**

(a) The Board shall have the following powers and duties:

(1) To administer and interpret this Chapter.

(2) To adopt, amend, and repeal rules to carry out the provisions of this Chapter.

(3) To examine and determine the qualifications and fitness of applicants for licensure under this Chapter.

(4) To issue, renew, deny, restrict, suspend, or revoke licenses.

(5) To conduct investigations of alleged violations of this Chapter or the Board's rules.

(6) To collect fees required by G.S. 88B-20 and any other monies permitted by law to be paid to the Board.

(7) To approve new cosmetic art schools.

(8) To inspect cosmetic art schools and shops.

(9) To adopt rules for the sanitary management and physical requirements of cosmetic art shops and cosmetic art schools.

(10) To establish a curriculum for each course of study required for the issuance of a license issued under this Chapter.

(11) To employ an executive director and any additional professional, clerical, or special personnel necessary to carry out the provisions of this Chapter, and to purchase or rent necessary office space, equipment, and supplies.

(12) To adopt a seal.

(13) To carry out any other actions authorized by this Chapter.

(b) A member of the Board shall have the authority to inspect cosmetic art shops and cosmetic art schools at any reasonable hour to determine compliance with the provisions of this Chapter if the inspection is made: (i) at the request of the Board, or with the approval of the chair or the executive director as the result of a complaint made to the Board or a problem reported by an inspector, or (ii) at the request of an inspector who deems it necessary to request the assistance of a Board member and who has the prior approval of the chair or executive director to do so. A Board member who makes an inspection pursuant to this subsection shall file a report with the Board before requesting reimbursement for expenses.

(c) The Board shall keep a record of its proceedings relating to the issuance, renewal, denial, restriction, suspension, and revocation of licenses. This record shall also contain each licensee's name, business and home addresses, license number, and the date the license was issued.

"§ 88B-5. Meetings and compensation of the Board.

(a) Each member of the Board shall receive compensation for services and expenses as provided in G.S. 93B-5, but shall be limited to payment for services deemed official business of the Board when such business exceeds three continuous hours per day. Official business of the Board includes meetings called by the chair and time spent inspecting cosmetic art shops and schools as permitted by this Chapter. No payment for per diem or travel expenses shall be authorized or paid for Board meetings other than those called by the chair. The Board may annually select one member to attend a national state board of cosmetic arts meeting on official business of the Board. No other Board members shall be authorized to attend trade shows or to travel out-of-state at the Board's expense.

(b) The Board shall hold four regular meetings a year in the months of January, April, July, and October. The chair may call additional meetings whenever necessary.

"§ 88B-6. Board office, employees, funds, budget requirements.

(a) The Board shall maintain its office in Raleigh, North Carolina.

(b) The Board shall employ an executive director who shall not be a member of the Board. The executive director shall keep all records of the Board, issue all necessary notices, and perform any other duties required by the Board.

(c) With the approval of the Director of the Budget and the Office of State Personnel, the Board may employ as many inspectors, investigators, and other staff as necessary to perform inspections and other duties prescribed by the Board. Inspectors and investigators shall be experienced in all parts of cosmetic art and shall

have authority to examine cosmetic art shops and cosmetic art schools during business hours to determine compliance with this Chapter.

(d) The salaries of all employees of the Board, including the executive director, shall be subject to the State Personnel Act.

(e) The executive director may collect in the Board's name and on its behalf the fees prescribed in this Chapter and shall turn these and any other monies paid to the Board over to the State Treasurer. These funds shall be credited to the Board and shall be held and expended under the supervision of the Director of the Budget only for the administration and enforcement of this Chapter. Nothing in this Chapter shall authorize any expenditure in excess of the amount credited to the Board and held by the State Treasurer as provided in this subsection.

(f) The Executive Budget Act and the State Personnel Act apply to the administration of this Chapter.

"§ 88B-7. Qualifications for licensing cosmetologists.

The Board shall issue a license to practice as a cosmetologist to any individual who meets all of the following requirements:

(1) Successful completion of at least 1,500 hours of a cosmetology curriculum in an approved cosmetic art school, or at least 1,200 hours of a cosmetology curriculum in an approved cosmetic art school and completion of an apprenticeship for a period of at least six months under the direct supervision of a cosmetologist, as certified by sworn affidavit of three licensed cosmetologists or by other evidence satisfactory to the Board.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ 88B-8. Qualifications for licensing apprentices.

The Board shall issue a license to practice as an apprentice to any individual who meets all of the following requirements:

(1) Successful completion of at least 1,200 hours of a cosmetology curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ 88B-9. Qualifications for licensing as an esthetician.

The Board shall issue a license to practice as an esthetician to any individual who meets all of the following requirements:

(1) Successful completion of at least 600 hours of an esthetician curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20.

"§ 88B-10. Qualifications for licensing manicurists.

The Board shall issue a license to practice as a manicurist to any individual who meets all of the following requirements:

(1) Successful completion of at least 150 hours of a manicurist curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.
(3) Payment of the fees required by G.S. 88B-20.

"**§ 88B-11. Qualifications for licensing teachers.**

(a) Applicants for any teacher's license issued by the Board shall meet all of the following requirements:

(1) Possession of a high school diploma or a high school graduation equivalency certificate.
(2) Payment of the fees required by G.S. 88B-20.

(b) The Board shall issue a license to practice as a cosmetology teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist license issued by the Board.
(2) Submits proof of either practice of cosmetic art in a cosmetic art shop for a period equivalent to five years of full-time work immediately prior to application or successful completion of at least 800 hours of a cosmetology teacher curriculum in an approved cosmetic art school.
(3) Passes an examination for cosmetology teachers conducted by the Board.

(c) The Board shall issue a license to practice as an esthetician teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist or an esthetician license issued by the Board.
(2) Submits proof of either practice as an esthetician in a cosmetic art shop for a period equivalent to three years of full-time work immediately prior to application or successful completion of at least 650 hours of an esthetician teacher curriculum in an approved cosmetic art school.
(3) Passes an examination for esthetician teachers conducted by the Board.

(d) The Board shall issue a license to practice as a manicurist teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a cosmetologist or manicurist license issued by the Board.
(2) Submits proof of either practice as a manicurist in a cosmetic art shop for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a manicurist teacher curriculum in an approved cosmetic art school.
(3) Passes an examination for manicurist teachers conducted by the Board.

"**§ 88B-12. Temporary employment permit; extensions; limits on practice.**

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, or manicurist who meets all of the following:

(1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.

(2) Has applied to take the examination within three months of completing the required hours.

(3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, or esthetician, as appropriate, and may not operate a cosmetic art shop.

"§ 88B-13. Applicants licensed in other states.

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, or manicurist in another state if the applicant shows:

(1) The applicant is an active practitioner in good standing.

(2) The applicant has practiced at least one of the three years immediately preceding the application for a license.

(3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.

(4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach.

"§ 88B-14. Licensing of cosmetic art shops.

(a) The Board shall issue a license to operate a cosmetic art shop to any applicant who submits a properly completed application, on a form approved by the Board, pays the required fee, and is determined, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) The applicant shall list all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(c) A cosmetic art shop shall be allowed to operate for a period of 30 days while the Board inspects and determines the shop's compliance with this Chapter and the Board's rules. If the Board is unable to complete the inspection within 30 days, the shop will be authorized to operate until such an inspection can be completed.

(d) A license to operate a cosmetic art shop shall not be transferable from one location to another or from one owner to another.

"**§ 88B-15. Practice outside cosmetic art shops.**

(a) Any individual licensed under this Chapter may visit the residences of individuals who are sick or disabled and confined to their places of residence in order to attend to their cosmetic needs. A licensed individual may also visit hospitals, nursing homes, rest homes, retirement homes, mental institutions, correctional facilities, funeral homes, and similar institutions to attend to the cosmetic needs of those in these institutions.

(b) An individual licensed under this Chapter may practice in a licensed barbershop as permitted by G.S. 86A-14.

"**§ 88B-16. Licensing cosmetic art schools.**

(a) The Board shall issue a license to any cosmetic art school that submits a properly completed application, on a form approved by the Board, pays the required license fee, and is determined by the Board, after inspection, to be in compliance with the provisions of this Chapter and the Board's rules.

(b) No one may open or operate a cosmetic art school before the Board has approved a license for the school. The Board shall not issue a license before a cosmetic art school has been inspected and determined to be in compliance with the provisions of this Chapter and the Board's rules.

(c) Cosmetic art schools located in this State shall be licensed by the Board before any credit may be given for curriculum hours taken in the school. The Board may establish standards for approving hours from schools in other states that are licensed.

"**§ 88B-17. Bond required for private cosmetic art schools.**

(a) Each private cosmetic art school shall provide a guaranty bond unless the school has already provided a bond or an alternative to a bond under G.S. 115D-95. The Board may restrict, suspend, revoke, or refuse to renew or reinstate the license of a school that fails to maintain a bond or an alternative to a bond pursuant to this section or G.S. 115D-95.

(b) (1) The applicant shall file the guaranty bond with the clerk of superior court in the county in which the school is located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student or the student's parent or guardian who has suffered loss of tuition or any fees by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services as related to course enrollment for any reason, including

suspension, revocation, or nonrenewal of a school's approval, bankruptcy, foreclosure, or the school's ceasing to operate.

(2) The bond amount shall be at least equal to the maximum amount of prepaid tuition held at any time by the school during the last fiscal year, but in no case shall be less than ten thousand dollars ($10,000). Each application for license or license renewal shall include a letter signed by an authorized representative of the school showing the calculations made and the method of computing the amount of the bond in accordance with rules prescribed by the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

(3) The bond shall remain in force and effect until canceled by the guarantor. The guarantor may cancel the bond upon 30 days' notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(c) An applicant who is unable to secure a bond may seek from the Board a waiver of the guaranty bond requirement and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the Board, an applicant may file one of the following instead of a bond with the clerk of court in the county in which the school is located:

(1) An assignment of a savings account in an amount equal to the bond required that is in a form acceptable to the Board, and is executed by the applicant and a state or federal savings and loan association, state bank, or national bank that is doing business in this State and whose accounts are insured by a federal depositor's corporation, and access to the account is subject to the same conditions as those for a bond in subsection (b) of this section.

(2) A certificate of deposit that is executed by a state or federal savings and loan association, state bank, or national bank that is doing business in this State and whose accounts are insured by a federal depositor's corporation and access to the certificate of deposit is subject to the same conditions as those for a bond in subsection (b) of this section.

"**§ 88B-18. Examinations.**

(a) Each applicant for any examination shall file an application with the Board, on a form approved by the Board, which shall be verified by the applicant under oath, and the applicant shall pay the required examination fee. Applications shall be filed at least 30 days before the requested examination date.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in the Board's office or in a publicly supported two-year postsecondary educational institution with appropriate facilities. The Board shall reimburse an institution, if requested, for the use of its facilities in administering examinations.

(d) An applicant for a cosmetologist license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board.

"**§ 88B-19. Expired school credits.**

No credit shall be approved by the Board if five years or more have elapsed from the date a person enrolled in a cosmetic art school unless the person completed the required number of hours and filed an application to take an examination administered by the Board.

"**§ 88B-20. Fees required.**

(a) The Board may charge examination fees as follows:

(1)	Cosmetologist	$ 20.00
(2)	Apprentice	$ 5.00
(3)	Manicurist	$ 15.00
(4)	Esthetician	$ 20.00
(5)	Teacher	$ 25.00.

(b) The Board may charge application fees as follows:

(1)	Inspection of a newly established cosmetic art shop	$ 25.00
(2)	Reciprocity applicant under G.S. 88B-13	$ 15.00.

(c) The Board may charge license fees as follows:

(1)	Cosmetologist	$ 39.00 every 3 years
(2)	Apprentice	$ 10.00 per year
(3)	Esthetician	$ 10.00 per year
(4)	Manicurist	$ 10.00 per year
(5)	Teacher	$ 10.00 every 2 years
(6)	Cosmetic art shop per active booth	$ 3.00 per year
(7)	Cosmetic art school	$ 50.00 per year
(8)	Duplicate license	$ 1.00.

(d) The Board may require payment of late fees and reinstatement fees as follows:

(1)	Apprentice, cosmetologist, esthetician, manicurist, and teacher late renewal	$ 10.00
(2)	Cosmetic art schools and shops late renewal	$ 10.00
(3)	Reinstatement - cosmetic art schools and shops	$ 25.00.

(e) The Board may prorate fees as appropriate.

"§ 88B-21. Renewals; expired licenses.

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a teacher's license, the teacher shall annually complete a minimum of eight hours of continuing education which shall be approved by the Board. Teachers shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection.

(f) If an apprentice, cosmetologist, esthetician, manicurist, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pay the license fee for each year that the fees are delinquent and to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

"§ 88B-22. Licenses required; criminal penalty.

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an esthetician or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this act is a Class 3 misdemeanor.

"§ 88B-23. Licenses to be posted.

(a) Every apprentice, cosmetologist, esthetician, manicurist, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works.

(b) Every certificate of license to operate a cosmetic art shop or school shall be conspicuously posted in the shop or school for which it is issued.

"§ 88B-24. Revocation of licenses and other disciplinary measures.

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

(1) Conviction of a felony shown by certified copy of the record of the court of conviction.

(2) Gross malpractice or gross incompetency as determined by the Board.

(3) Advertising by means of knowingly false or deceptive statements.

(4) Permitting any individual to practice cosmetic art without a license or temporary employment permit, with an expired license or temporary employment permit, or with an invalid license or temporary employment permit.

(5) Obtaining or attempting to obtain a license for money or other thing of value other than the required fee or by fraudulent misrepresentation.

(6) Practicing or attempting to practice by fraudulent misrepresentation.

(7) Willful failure to display a certificate of license as required by G.S. 88B-23.

(8) Willful violation of the rules adopted by the Board.

(9) Violation of G.S. 86A-15 by a cosmetologist, esthetician, or manicurist licensed by the Board and practicing cosmetic art in a barber shop.

"§ 88B-25. Exemptions.

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their professional duties:

(1) Undertakers and funeral establishments licensed under G.S. 90-210.25.

(2) Persons authorized to practice medicine or surgery under Chapter 90 of the General Statutes.

(3) Nurses licensed under Chapter 90 of the General Statutes.
(4) Commissioned medical or surgical officers of the United States Army, Air Force, Navy, Marine, or Coast Guard.
(5) A person employed in a cosmetic art shop to shampoo hair.

"**§ 88B-26. Rules to be posted.**

(a) The Board shall furnish a copy of its rules relating to sanitary management of cosmetic art shops and cosmetic art schools to each shop and school licensed by the Board. Each shop and school shall post the rules in a conspicuous place.

(b) The Board shall furnish a copy of its rules relating to curriculum and schools to each licensed cosmetic art school. Each cosmetic art school shall make these rules available to all teachers and students.

"**§ 88B-27. Inspections.**

Any inspector or other authorized representative of the Board may enter any cosmetic art shop or school to inspect it for compliance with this Chapter and the Board's rules. All persons practicing cosmetic art in a shop or school shall, upon request, present satisfactory proof of identification. Satisfactory proof shall be in the form of a photographic driver's license or photographic identification card issued by any state, federal, or other government entity. The Board may require a cosmetic art shop or school to be inspected as a condition for license renewal.

"**§ 88B-28. Restraining orders.**

The Board, the Department of Health and Human Services, or any county or district health director may apply to the superior court for an injunction to restrain any person from violating the provisions of this Chapter or the Board's rules. Actions under this section shall be brought in the county where the defendant resides or maintains his or her principal place of business or where the alleged acts occurred.

"**§ 88B-29. Civil penalties.**

(a) Authority to Assess Civil Penalties. -- In addition to taking any of the actions permitted under G.S. 88B-24, the Board may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(b) Consideration Factors. -- Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.
(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
(3) Whether the violation was willful and malicious.
(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. -- The Board shall establish a schedule of civil penalties for violations of this Chapter. The schedule shall indicate for each type of violation whether the violation can be corrected. Penalties shall be assessed for the

first, second, and third violations of specified sections of this Chapter and for specified rules.

(d) Costs. -- The Board may in a disciplinary proceeding charge costs, including reasonable attorneys' fees, to the licensee against whom the proceedings were brought."

Section 2.1. G.S. 88B-10, as enacted by this act, reads as rewritten:

"**§ 88B-10 Qualifications for licensing manicurists.**

The Board shall issue a license to practice as a manicurist to any individual who meets all of the following requirements:

(1) Successful completion of at least ~~150~~ 300 hours of a manicurist curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20."

Section 2.2. G.S. 86A-14 reads as rewritten:

"**§ 86A-14. Persons exempt from the provisions of this Chapter.**

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their duties:

(1) Persons authorized under the laws of the State to practice medicine and surgery, and those working under their supervision;

(2) Commissioned medical or surgical officers of the U.S. Army or other components of the U.S. armed forces, and those working under their supervision;

(3) Registered nurses and licensed practical nurses and those working under their supervision;

(4) Licensed embalmers and funeral directors and those working under their supervision;

(5) Persons who are working in licensed cosmetic shops or beauty schools and are licensed by the State Board of Cosmetic Art Examiners pursuant to Chapter ~~88~~ 88B of the General Statutes; and

(6) Persons who are working in licensed barber shops and are licensed by the State Board of Cosmetic Art Examiners pursuant to Chapter ~~88~~ 88B of the General Statutes, provided that those persons shall comply with G.S. 86A-15."

Section 3. Any esthetician who submits proof to the Board that the esthetician is actively engaged in the practice of esthetics on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-9, as enacted by Section 2 of this act. A cosmetic art shop that practices esthetics only and that submits proof to the Board that the shop is actively engaged in the practice of esthetics on the effective date of this act, shall have one year from the date of this act to comply with the requirements in G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the

Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 4. Any manicurist who submits proof to the Board that the manicurist is actively engaged in the practice of manicuring on the effective date of this act, and who passes an examination conducted by the Board, and pays the required fee shall be licensed without having to satisfy the requirements of G.S. 88B-10, as enacted by Section 2 of this act. A cosmetic art shop that practices manicuring only and that submits proof to the Board that the shop is actively engaged in the practice of manicuring on the effective date of this act, shall have one year from the date of this act to comply with the requirements in G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

Section 5. Until the Board adopts a staggered license renewal plan under G.S. 88B-21(b), as enacted by Section 2 of this act, any cosmetologist who applies for licensure in a year other than the year all other cosmetologist licenses are due for renewal shall pay the annual fee provided in G.S. 88B-20, as enacted by Section 2 of this act, on or before October 1 of each year until the year all other cosmetologist licenses are again due for renewal. Any license not renewed shall expire on October 1 of that year.

Section 6. Any license currently issued by the State Board of Cosmetic Art Examiners shall remain valid until its expiration.

Section 7. The State Board of Cosmetic Art Examiners existing on the effective date of this act shall continue in effect until the terms of the members expire or a member is removed as authorized in G.S. 88B-3, as enacted by Section 2 of this act. Vacancies on the Board shall be filled as authorized in G.S. 88B-3, as enacted by Section 2 of this act. The rules of the State Board of Cosmetic Art Examiners in effect on the effective date of this Chapter shall continue in effect until amended.

Section 8. Nothing in this Chapter shall require the North Carolina Board of Cosmetic Art Examiners to issue esthetician's licenses until the General Assembly enacts legislation allowing the Board to charge an examination fee of twenty dollars ($20.00) and a license fee of ten dollars ($10.00) per year.

Section 9. G.S. 14-400 reads as rewritten:

"**§ 14-400. ~~Tattooing~~ Tattooing; body piercing prohibited.**

(a) It shall be unlawful for any person or persons to tattoo the arm, limb, or any part of the body of any other person under 18 years of age. Anyone violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(b) It shall be unlawful for any person to pierce any part of the body other than ears of another person under the age of 18 for the purpose of allowing the insertion of earrings, jewelry, or similar objects into the body, unless the prior consent of a custodial parent or guardian is obtained. Anyone violating the provisions of this section is guilty of a Class 2 misdemeanor."

PART II. CREATE THE NORTH CAROLINA MASSAGE AND BODYWORK THERAPY PRACTICE ACT.

Section 10. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 36.

"Massage and Bodywork Therapy Practice.

"§ 90-620. Short title.

This Article shall be known as the North Carolina Massage and Bodywork Therapy Practice Act.

"§ 90-621. Declaration of purpose.

The General Assembly recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapy is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.

"§ 90-622. Definitions.

The following definitions apply in this Article:

(1) Board. -- The North Carolina Board of Massage and Bodywork Therapy.

(2) Board-approved school. -- Any massage and bodywork therapy school or training program in this State or another state that has met the criteria established by the Board.

(3) Massage and bodywork therapy. -- Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:

a. Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.

b. Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.

c. The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.

(4) Massage and bodywork therapist. -- A person licensed under this Article.

(5) Practice of massage and bodywork therapy. -- The application of massage and bodywork therapy to any person for a fee or other consideration. 'Practice of massage and bodywork therapy' does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"§ 90-623. License required.

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including 'massage therapist', 'bodywork therapist', 'masseur', 'masseuse', 'massagist', 'somatic practitioner', 'body therapist', 'structural integrator', or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term 'massage therapist' or 'bodywork therapist' or any other term that implies a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title 'Licensed Massage and Bodywork Therapist'. No other person shall assume this title or use an abbreviation or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

"§ 90-624. Exemptions.

Nothing in this Article shall be construed to prohibit or affect:

(1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.

(2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(3) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under this Article.

(4) Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.

(5) A person giving massage and bodywork therapy to members of that person's immediate family.

(6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

(7) The practice of techniques that are specifically intended to affect the human energy field.

"§ 90-625. North Carolina Board of Massage and Bodywork Therapy.

(a) The North Carolina Board of Massage and Bodywork Therapy is created. The Board shall consist of seven members who are residents of this State and are as follows:

(1) Five members shall be massage and bodywork therapists who have been licensed under this Article and have been in the practice of massage and bodywork therapy for at least five of the last seven years prior to their serving on the Board. The appointments shall be made from lists provided by the North Carolina Therapeutic Massage and Bodywork Task Force. Consideration shall be given to geographical distribution, practice setting, clinical specialty, and other factors that will promote diversity of the profession on the Board. One of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and three shall be appointed by the Governor.

(2) The remaining two members shall be members of the general public who shall not be licensed under this Article or the spouse of a person who is so licensed, or have any financial interest, directly or indirectly, in the profession regulated. One of these members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member of the Board shall serve for a term of three years, ending on June 30 of the last year of the term. A member shall not be appointed to serve more than two consecutive terms.

(d) The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business but no less than twice a year. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

"**§ 90-626. Powers and duties.**

The Board shall have the following powers and duties:

(1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage and bodywork therapy practice.
(2) Evaluate the qualifications of applicants for licensure under this Article.
(3) Issue, renew, deny, suspend, or revoke licenses under this Article.
(4) Reprimand or otherwise discipline licensees under this Article.
(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.
(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.
(7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.
(8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.
(9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board, including rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapy establishments. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.
(10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.
(11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.
(12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.
(13) Provide a system for grievances to be presented and resolved.

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective.

"**§ 90-627. Custody and use of funds.**

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article.

"**§ 90-628. Expenses and fees.**

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the General Fund.

(b) The Board may impose the following fees up to the amounts listed below:

(1)	Application for examination	$200.00
(2)	License fee	150.00
(3)	License renewal	100.00
(4)	Late renewal penalty	75.00
(5)	License by reciprocity	50.00
(6)	Duplicate license	25.00
(7)	Provisional license	150.00.

"**§ 90-629. Requirements for licensure.**

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

(1) Has obtained a high school diploma or equivalent.

(2) Is 18 years of age or older.

(3) Is of good moral character as determined by the Board.

(4) Has successfully completed a course of study consisting of a minimum of 500 classroom hours of supervised instruction at a Board-approved school.

(5) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board.

"**§ 90-630. Reciprocity.**

(a) An applicant shall be eligible for licensure if (i) the applicant has been licensed in another state within five years of the application to the Board and the other state has standards for massage and bodywork therapists that are substantially equivalent to those in this State; (ii) the applicant holds a current certification from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets NCCA standards; or (iii) the applicant meets special requirements established by the Board.

(b) Upon receipt of an application for reciprocity, the Board shall contact each jurisdiction that has previously certified or licensed the applicant to determine whether there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

(c) Reciprocity may not be granted if the state in which the applicant is licensed has not granted a similar reciprocity to licensees in this State.

"§ 90-631. Massage and bodywork therapy schools.

The Board shall establish rules for the approval of massage and bodywork therapy schools. These rules shall include:

(1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapy.

(2) Standards for faculty and learning resources.

(3) Requirements for reporting changes in instructional staff and curriculum.

(4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapy may make application for approval to the Board. The Board shall grant approval to schools, whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved schools.

"§ 90-632. License renewal and continuing education.

The license to practice under this Article shall be renewed every two years. When renewing a license, each licensee shall submit to the Board evidence of the successful completion of at least 25 hours of study, as approved by the Board, during the immediately preceding two years, in the practice of massage and bodywork therapy.

"§ 90-633. Disciplinary action.

The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) The use of drugs or intoxicating liquors to an extent that affects professional competency.

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.

(4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.

(5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules.

(7) The commission of an act of malpractice, gross negligence, or incompetency.

(8) Practice as a licensee under this Article without a valid certificate or renewal.

(9) Engaging in conduct that could result in harm or injury to the public.

(10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapy without successfully completing training approved by the Board in that specialty.

"**§ 90-634. Enforcement; injunctive relief.**

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

(1) Practice of massage and bodywork therapy.

(2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.

(3) Use any title descriptive of any branch of massage and bodywork therapy, as provided in G.S. 90-623, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action.

"**§ 90-635. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article.

"**§ 90-636. Regulation by county or municipality.**

Nothing in this Article shall be construed to prohibit a county or municipality from regulating persons covered by this Article, however, a county or municipality may not impose regulations that are inconsistent with this Article."

Section 12. Notwithstanding the provisions of G.S. 90-625(a), as enacted in Section 10 of this act, the terms of initial appointments to the North Carolina Board of Massage and Bodywork Therapy shall be as follows:

(1) The terms of the three members appointed by the Governor pursuant to G.S. 90-625(a)(1), as enacted in Section 10 of this act, shall expire June 30, 2001.

(2) The terms of all other members shall expire June 30, 2000.

Section 13. The five initial appointments to the North Carolina Board of Massage and Bodywork Therapy pursuant to G.S. 90-625(a)(1), as enacted in Section 10 of this act, shall satisfy all of the provisions of G.S. 90-625(a)(1), except the licensure requirement, and shall satisfy the provisions of G.S. 90-629(1) through (4), as enacted in Section 10 of this act, except the 500 classroom hours of supervised instruction do not have to be in a curriculum that meets the basic guidelines established by the North Carolina Board of Massage and Bodywork Therapy.

Section 14. If an applicant does not meet the educational or examinations requirements in G.S. 90-629(4) and (5), as enacted in Section 10 of this act, then for a maximum period of two years after the effective date of this act, the Board may permanently waive those requirements and grant a provisional license to the applicant. At the end of two years after the granting of the provisional license, the applicant shall submit evidence to the Board of his or her compliance with the continuing education requirements in G.S. 90-632, as enacted in Section 10 of this act. Upon receipt of proper documentation, the applicant shall be issued a license to practice massage and bodywork therapy. An applicant for a provisional license shall meet the requirements set forth in G.S. 90-629 (1) through (3), as enacted in Section 10 of this act, and shall submit all of the following for consideration by the Board:

(1) Documentation that the applicant has been engaged in the professional practice of massage and bodywork therapy for a minimum of four years prior to the application to the Board.

(2) Documentation of a minimum of 500 hours of professional practice in the field of massage and bodywork therapy during the four years prior to the application to the Board.

(3) Verification that the applicant has been practicing in the State at the time the application is submitted.

(4) Three letters of reference from sources approved by the Board attesting to the sound moral character, professional qualifications, and competence of the applicant.

PART III. EFFECTIVE DATES.

Section 15. Sections 1 through 8 of this act become effective October 1, 1998, and apply to applications made and acts occurring on or after that date, except that Section 2.1 of this act becomes effective January 1, 1999. Section 9 of this act becomes effective December 1, 1998, and applies to offenses committed on or after that date. Sections 10 through 14 of this act become effective October 1, 1998, and apply to offenses occurring on or after that date. The remainder of this act is effective when it becomes law.

Rep Clark

My file copy

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
S.B. 916 A BILL TO BE ENTITLED AN ACT TO REWRITE THE LAWS REGULATING COSMETIC ART.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 8

SENATE BILL 1291*
Transportation Committee Substitute Adopted 6/11/98
Transportation Committee Substitute #2 Adopted 7/15/98
Transportation Committee Substitute #3 Adopted 7/16/98
Finance Committee Substitute #4 7/22/98
Sixth Edition Engrossed 7/23/98
Seventh Edition Engrossed 8/6/98
Corrected Copy 8/7/98

Short Title: Transportation Corridors. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION, REGIONAL PUBLIC TRANSPORTATION AUTHORITIES, AND REGIONAL TRANSPORTATION AUTHORITIES TO CREATE TRANSPORTATION CORRIDORS AND PROTECT THEM FROM DEVELOPMENT, AND TO INSURE PROPER NOTICE TO ALL PROPERTY OWNERS AFFECTED BY THE CORRIDORS.

The General Assembly of North Carolina enacts:

Section 1. Article 2E of Chapter 136 reads as rewritten:

"ARTICLE 2E.

"~~Roadway~~ Transportation Corridor Official Map Act.

"**§ 136-44.50. ~~Roadway~~ Transportation corridor official map act.**

(a) A ~~roadway~~ transportation corridor official map may be adopted or ~~amended~~ amended by any of the following:

(1) ~~by the~~ The governing board of any city for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to ~~G.S. 136-66.2 or~~ G.S. 136-66.2 or for any

proposed public transportation corridor included in the adopted long-range transportation plan.

(2) ~~by the~~ The Board of Transportation for any portion of the existing or proposed State highway ~~system.~~ system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.

(3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.

Before a city adopts a ~~roadway~~ transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a ~~roadway~~ transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city ~~must~~ shall obtain approval from the Board of County Commissioners.

No ~~roadway~~ transportation corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

(1) The governing board of the ~~city~~ city, the regional transportation authority, or the Department of Transportation ~~in each county affected by the map,~~ has held a public hearing in each county affected by the map on the proposed map or amendment. Notice of the hearing shall be provided:

a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the ~~roadway~~ transportation corridor to be designated is located.

b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the ~~roadway~~ transportation corridor passes.

c. By posting copies of the proposed ~~roadway~~ transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

(2) A permanent certified copy of the ~~roadway~~ transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure

approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds.

(b) ~~Roadway~~ Transportation corridor official maps and amendments shall be distributed and maintained in the following manner:

(1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk and in the office of the district engineer.

(2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a ~~roadway~~ transportation corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five dollars ($5.00) for each map sheet or page recorded.

(4) The names submitted as required under subdivision (a)(3) of this section shall be indexed in the 'grantor' index by the Register of Deeds.

(c) Repealed by Session Laws 1989, c. 595, s. 1.

(d) Within ~~one year~~ two years following the establishment of a ~~roadway~~ transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the ~~one-year~~ two-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the ~~roadway~~ transportation corridor. A city may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a ~~roadway~~ transportation corridor official map or amendments to a ~~roadway~~ transportation corridor official map. When a city prepares a ~~roadway~~ transportation corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. An amendment to a corridor shall not extend the two-year period provided by this section unless it establishes a substantially different corridor in a primarily new location.

(e) The term 'amendment' for purposes of this section includes any change to a transportation corridor official map, including:

(1) Failure of the Department of Transportation, a city, or a regional transportation authority to begin work on an environmental impact statement or preliminary engineering as required by this section; or

(2) Deletion of the corridor from the transportation corridor official map by action of the Board of Transportation, or deletion of the corridor from the long-range transportation plan of a city or regional transportation authority by action of the city or regional transportation authority governing Board.

"**§ 136-44.51. Effect of ~~roadway~~ transportation corridor official map.**

(a) After a ~~roadway~~ transportation corridor official map is filed with the register of deeds, no building permit shall be issued for any building or structure or part thereof located within the ~~roadway~~ transportation corridor, nor shall approval of a subdivision, as defined in G.S. 153A-335 and G.S. 160A-376, be granted with respect to property within the ~~roadway~~ transportation corridor. The ~~district engineer of the Highway District in which the roadway corridor is located~~ Secretary of Transportation or his designee, the director of a regional public transportation authority, or the director of a regional transportation authority, as appropriate, shall be notified within 10 days of all requests for building permits or subdivision approval within the ~~roadway~~ transportation corridor. The provisions of this section shall not apply to valid building permits issued prior to August 7, 1987, or to building permits for buildings and structures which existed prior to the filing of the ~~roadway~~ transportation corridor provided the size of the building or structure is not increased and the type of building code occupancy as set forth in the North Carolina Building Code is not changed.

(b) ~~No~~ In any event, no application for building permit issuance or subdivision plat approval for a tract subject to a valid transportation corridor official map shall be delayed by the provisions of this section for more than three years from the date of its original submittal.

"**§ 136-44.52. Variance from ~~roadway~~ transportation corridor official map.**

(a) The Department of ~~Transportation or~~ Transportation, the regional public transportation authority, the regional transportation authority, or the city which initiated the ~~roadway~~ transportation corridor official map shall establish procedures for considering petitions for variance from the requirements of G.S. 136-44.51.

(b) The procedure established by the State shall provide for written notice to the Mayor and Chairman of the Board of County Commissioners of any affected city or county, and for the hearing to be held in the county where the affected property is located.

(c) Cities may provide for petitions for variances to be heard by the board of adjustment or other boards or commissions which can hear variances authorized by G.S. 160A-388. The procedures for boards of adjustment shall be followed except that no vote greater than a majority shall be required to grant a variance.

(d) A variance may be granted upon a showing that:

(1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and

(2) The requirements of G.S. 136-44.51 result in practical difficulties or unnecessary hardships.

"**§ 136-44.53. Advance acquisition of right-of-way within the ~~roadway~~ transportation corridor.**

(a) After a ~~roadway~~ transportation corridor official map is filed with the register of deeds, the Department of ~~Transportation or~~ Transportation, the regional public transportation authority, the regional transportation authority, or then it becomes law a city which initiated the ~~roadway~~ transportation corridor official map ~~is authorized to~~ may make advanced acquisition of specific parcels of property when ~~such~~ that acquisition is determined by the respective governing board to be in the best public interest to protect the ~~roadway~~ transportation corridor from development or when the ~~roadway~~ transportation corridor official map creates an undue hardship on the affected property owner.

(b) Prior to making any ~~such~~ advanced acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective ~~municipal~~ governing board which initiated the ~~roadway~~ transportation corridor official map shall develop and adopt appropriate policies and procedures to govern ~~such~~ the advanced acquisition of right-of-way and to assure ~~such~~ that the advanced acquisition is in the best overall public interest.

(c) When a city makes an advanced right-of-way acquisition of property within a ~~roadway~~ transportation corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the city for the cost of ~~such~~ any advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The city shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a municipality is authorized to expend municipal funds for the protection of rights-of-way shown on a duly adopted ~~roadway~~ transportation corridor official map whether the right-of-way to be acquired is located inside or outside the municipal corporate limits."

"**§ 136-44.54. Standard for appraisal of right-of-way within corridor.**

The Department shall utilize the criteria contained in 49 C.F.R. § 24.103 (1997) when appraising right-of-way in a transportation corridor designated under this Article."

Section 2. G.S. 105-277.9 reads as rewritten:

"**§ 105-277.9. Taxation of property inside certain roadway corridors.**

Real property that lies within a ~~roadway~~ transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Article V, Sec. 2(2) of the North

Carolina Constitution and is taxable at twenty percent (20%) of the general tax rate levied on real property by the taxing unit in which the property is situated if:

(1) As of January 1, no building or other structure is located on the property; and

(2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor."

Section 3. G.S. 136-102.6(j) reads as rewritten:

"(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a ~~roadway~~ transportation corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article."

Section 4. G.S. 160A-458.4 reads as rewritten:

"**§ 160A-458.4. Designation of ~~roadway~~ transportation corridor official maps.**

Any city may establish ~~roadway~~ transportation corridor official maps and may enact and enforce ordinances pursuant to Article 2E of Chapter 136 of the General Statutes."

Section 5. G.S. 161-14 is amended by adding a new subsection to read:

"(c) Transportation corridor official maps authorized under Article 2E of Chapter 136 shall be registered and indexed by the end of the third business day after the business day the map is presented to the Register of Deeds."

Section 6. This act becomes effective October 1, 1998, and applies to transportation corridor official maps, or amendments to those maps, adopted on or after the effective date of this act.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1291 (Eighth Edition of the Bill)

SHORT TITLE: Transportation Corridors

SPONSOR(S): Senator Gulley

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Local Property Taxes					
Phase I	0	0	($16,968)	($16,968)	($16,968)
Phase II	0	0	0	0	($467,048)
TOTAL LOCAL	**0**	**0**	**($16,968)**	**($16,968)**	**($484,016)**

EXPENDITURES

No cost impact expected on the Highway Fund or local funds.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Local Governments involved in a rapid transit project.

EFFECTIVE DATE: The bill becomes effective October 1, 1998, and applies to transportation corridor official maps, or amendments to those maps, adopted on or after the effective data.

BILL SUMMARY: Under current law the Department of Transportation, as well as cities, can preserve highway corridors by designating them on official roadway corridor maps. By designating the corridors on an official corridor map, the Department and cities effectively stop development on the property. The Department and the cities can delay any development on the corridor for three years, in anticipation of a future road project. The bill extends the law to transit corridors (light rail corridors) by using the term "transportation" corridors instead of "highway corridors". The bill also changes the procedures for adoption and the impact of corridor maps. The bill extends the favorable tax treatment for land subject to the highway corridor regulations to all transit corridor land. The bill also authorizes Public Transit

Authorities to preserve transit corridors. Under current law only the Department of Transportation and cities can preserve a corridor. The bill requires the Register of Deeds to register and index transportation corridor official maps in three days. The bill makes other conforming changes to the existing highway corridor map system.

ASSUMPTIONS AND METHODOLOGY: Two items in the bill have a potential fiscal impact. First, the bill requires that the Register of Deeds make notations, within three days, on the property records for each parcel of property affected by transportation corridors. Based on information provided by the Department of Transportation and the North Carolina Register of Deeds Association, Fiscal Research believes the impact of this requirement on counties would be insignificant.

The bill also extends the "favorable tax treatment" received by owners of highway corridor land to owners of transit authority land. Under current law, property included in a highway corridor map is taxable at only 20% of the general property tax rate for the period the land is on a highway corridor map. As such, the property owner gets a significant local property tax reduction on that particular piece of property. (The tax reduction is a form of consideration for limiting development on the site.) The provision only applies if the property is undeveloped (there are no buildings on the property) and not subdivided.

At present, only the Triangle area is in the process of developing a public transit system, although the Triad area may consider such a development in future years. Because the Triangle is the only area likely to map a transit corridor before the end of FY 2002-3 it is the only area considered in the analysis. According to the Triangle Transit Authority, the bill has a potential fiscal impact on Wake County, Durham County, and Orange County, as well as the municipalities of Raleigh, Mooresville, Durham, and the Research Triangle Park. The fiscal impact will be the loss of 80% of the property tax revenue associated with undeveloped tracts of land on the corridor map. The chart below outlines the local government losses.

	Property Value	**Purpose**	**County Loss**	**Municipal Loss**
Phase I:				
Wake County	$1,000,000	Stations in Raleigh	$ 5,000	$ 4,150
	$200,000	Stations in Mooresville	$ 1,000	$ 960
Durham County	$400,000	Stations in RTP	$ 2,999	$ 280
	$200,000	Stations in the City of Durham	$ 1,499	$ 1,080
TOTAL PHASE I	$1,800,000		$ 10,498	$ 6,470
Phase II:	Property Value	Purpose	County Revenue Loss	Municipal Loss
Durham County	$44,000,000	Rail and Stations	$ 329,868	unknown
Orange County	$19,000,000	Rail and Stations	$ 137,180	unknown
TOTAL PHASE II	$63,000,000		$467,048	unknown

The Triangle Transit Authority expects to map Phase I in FY 2000-1. They also expect to map portions of Phase II in FY 2002-3. The revenue loss begins in the fiscal year the property is mapped, and continues for three years. After three years the property is removed from the map, or is purchased by a city or the Department of Transportation for development of the rail line. As such, triangle local governments will lose $16,968 in property tax revenue in fiscal years 2000-1, 2001-2, and 2002-3. This is the loss associated with Phase I development. Durham and Orange counties will lose an additional $467,048 in fiscal years 2002-3, 2003-4, and 2004-5. These are the costs associated with Phase II development. Municipal losses associated with Phase II can not be calculated because the exact location of the lines and stations has not been determined.

Note: This fiscal analysis only addresses the fiscal impact of changes in the map act. It does not address the fiscal impact of potential land purchases for mass transit.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Linda Struyk Millsaps and Evan Rodewald

APPROVED BY: Tom Covington
DATE: August 13, 1998

EXPLANATION OF SENATE BILL 1291:
Transportation Corridors (8th Edition)

TO: House Finance Committee
FROM: Giles Perry and Martha Walston, Staff Attorneys
DATE: August 19, 1998
SPONSOR: Senator Gulley

The concept behind Senate Bill 1291 was recommended by the LRC Public Transit study committee.

Under current law, the Department of Transportation and cities are authorized to preserve highway corridors by designating them on official roadway corridor maps. DOT must begin work on a preliminary engineering or an environmental impact statement (EIS) for the project proposed for the corridor within one year from the date the map is filed. Once the maps are properly adopted and filed at the register of deeds, issuance of a building permit for a project on land subject to a corridor map can be delayed for three years from the date of submittal.

Senate Bill 1291 expands existing law concerning Roadway Corridor Official maps by:

1. Authorizing DOT and cities to preserve transit corridors, in addition to road corridors.
2. Authorizing regional public transportation authorities created under Article 26 and regional transportation authorities created under Article 27 of Chapter 160A to adopt or amend a transportation corridor official map for any proposed public transportation corridor or adjacent station or parking lot included in the long-range transportation plan.

In addition, Senate Bill 1291 changes the procedures concerning adoption and effect of the transportation corridors official maps, as follows:

1. Allows the reserving entity up to *two* years to begin preliminary engineering or EIS work on the project in the corridor.
2. Requires indexing of names of property owners affected by the corridor in the grantor files at the register of deeds, to insure notice to affected property owners and subsequent purchasers. The map must be registered and indexed at end of third business after business day the map is presented to the Register of Deeds.
3. Clarifies that all notice and indexing procedures in the statue apply to amendments as well as the original filing of the corridor.
4. Clarifies that appraisals of land subject to the corridor official maps shall not be affected by the fact that it is in a corridor.

Senate Bill 1291 adds the director of a regional public transportation authority and the director of regional transportation authority as persons to be notified of requests for building permits or subdivision approvals within a transportation corridor. Current law only requires notice to the district engineer of the Highway District.

Senate Bill 1291 also makes several conforming changes, including extending the favorable property tax treatment for land subject to *highway* corridor official maps to land subject to all of the newly redesignated *transportation* corridor official maps. Such land is taxable at 20% of the general tax rate levied on real property.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1291

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1291-ALA-001

Date_____,1998

Comm. Sub. []
Amends Title []
Eighth Edition

moves to amend the bill on page 4, lines 8 and 9,
by inserting between those lines the following subsection:
"(f) The term 'transportation corridor' as used in this Article does not include bikeways or greenways."

SIGNED Connie Wilson
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1291*
Transportation Committee Substitute Adopted 6/11/98
Transportation Committee Substitute #2 Adopted 7/15/98
Transportation Committee Substitute #3 Adopted 7/16/98
Finance Committee Substitute #4 7/22/98
Sixth Edition Engrossed 7/23/98
Seventh Edition Engrossed 8/6/98
Corrected Copy 8/7/98
Proposed House Committee Substitute S1291-PCSA895-LA003

Short Title: Transportation Corridors. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION, REGIONAL PUBLIC TRANSPORTATION AUTHORITIES, AND REGIONAL TRANSPORTATION AUTHORITIES TO CREATE TRANSPORTATION CORRIDORS AND PROTECT THEM FROM DEVELOPMENT, AND TO INSURE PROPER NOTICE TO ALL PROPERTY OWNERS AFFECTED BY THE CORRIDORS.

The General Assembly of North Carolina enacts:

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(1) ~~by the~~ The governing board of any city for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to ~~G.S. 136-66.2 or~~ G.S. 136-66.2 or for any

proposed public transportation corridor included in the adopted long-range transportation plan.

(2) ~~by the~~ The Board of Transportation for any portion of the existing or proposed State highway ~~system.~~ system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.

(3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.

Before a city adopts a ~~roadway~~ transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a ~~roadway~~ transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city ~~must~~ shall obtain approval from the Board of County Commissioners.

No ~~roadway~~ transportation corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

(1) The governing board of the ~~city~~ city, the regional transportation authority, or the Department of Transportation ~~in each county affected by the map,~~ has held a public hearing in each county affected by the map on the proposed map or amendment. Notice of the hearing shall be provided:

a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the ~~roadway~~ transportation corridor to be designated is located.

b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the ~~roadway~~ transportation corridor passes.

c. By posting copies of the proposed ~~roadway~~ transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

(2) A permanent certified copy of the ~~roadway~~ transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure

approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds.

(b) ~~Roadway~~ Transportation corridor official maps and amendments shall be distributed and maintained in the following manner:

(1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk and in the office of the district engineer.

(2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a ~~roadway~~ transportation corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five dollars ($5.00) for each map sheet or page recorded.

(4) The names submitted as required under subdivision (a)(3) of this section shall be indexed in the 'grantor' index by the Register of Deeds.

(c) Repealed by Session Laws 1989, c. 595, s. 1.

(d) Within ~~one year~~ two years following the establishment of a ~~roadway~~ transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the ~~one-year~~ two-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the ~~roadway~~ transportation corridor. A city may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a ~~roadway~~ transportation corridor official map or amendments to a ~~roadway~~ transportation corridor official map. When a city prepares a ~~roadway~~ transportation corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. An amendment to a corridor shall not extend the two-year period provided by this section unless it establishes a substantially different corridor in a primarily new location.

(e) The term 'amendment' for purposes of this section includes any change to a transportation corridor official map, including:

(1) Failure of the Department of Transportation, a city, or a regional transportation authority to begin work on an environmental impact statement or preliminary engineering as required by this section; or

(2) Deletion of the corridor from the transportation corridor official map by action of the Board of Transportation, or deletion of the corridor from the long-range transportation plan of a city or regional transportation authority by action of the city or regional transportation authority governing Board.

(f) The term 'transportation corridor' as used in this Article does not include bikeways or greenways.

"§ 136-44.51. Effect of ~~roadway~~ transportation corridor official map.

(a) After a ~~roadway~~ transportation corridor official map is filed with the register of deeds, no building permit shall be issued for any building or structure or part thereof located within the ~~roadway~~ transportation corridor, nor shall approval of a subdivision, as defined in G.S. 153A-335 and G.S. 160A-376, be granted with respect to property within the ~~roadway~~ transportation corridor. The ~~district engineer of the Highway District in which the roadway corridor is located~~ Secretary of Transportation or his designee, the director of a regional public transportation authority, or the director of a regional transportation authority, as appropriate, shall be notified within 10 days of all requests for building permits or subdivision approval within the ~~roadway~~ transportation corridor. The provisions of this section shall not apply to valid building permits issued prior to August 7, 1987, or to building permits for buildings and structures which existed prior to the filing of the ~~roadway~~ transportation corridor provided the size of the building or structure is not increased and the type of building code occupancy as set forth in the North Carolina Building Code is not changed.

(b) ~~No~~ In any event, no application for building permit issuance or subdivision plat approval for a tract subject to a valid transportation corridor official map shall be delayed by the provisions of this section for more than three years from the date of its original submittal.

"§ 136-44.52. Variance from ~~roadway~~ transportation corridor official map.

(a) The Department of ~~Transportation or~~ Transportation, the regional public transportation authority, the regional transportation authority, or the city which initiated the ~~roadway~~ transportation corridor official map shall establish procedures for considering petitions for variance from the requirements of G.S. 136-44.51.

(b) The procedure established by the State shall provide for written notice to the Mayor and Chairman of the Board of County Commissioners of any affected city or county, and for the hearing to be held in the county where the affected property is located.

(c) Cities may provide for petitions for variances to be heard by the board of adjustment or other boards or commissions which can hear variances authorized by G.S. 160A-388. The procedures for boards of adjustment shall be followed except that no vote greater than a majority shall be required to grant a variance.

(d) A variance may be granted upon a showing that:

(1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and

(2) The requirements of G.S. 136-44.51 result in practical difficulties or unnecessary hardships.

"§ 136-44.53. Advance acquisition of right-of-way within the ~~roadway~~ transportation corridor.

(a) After a ~~roadway~~ transportation corridor official map is filed with the register of deeds, the Department of ~~Transportation or~~ Transportation, the regional public transportation authority, the regional transportation authority, or the city which initiated the ~~roadway~~ transportation corridor official map ~~is authorized to~~ may make advanced acquisition of specific parcels of property when ~~such~~ that acquisition is determined by the respective governing board to be in the best public interest to protect the ~~roadway~~ transportation corridor from development or when the ~~roadway~~ transportation corridor official map creates an undue hardship on the affected property owner.

(b) Prior to making any ~~such~~ advanced acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective ~~municipal~~ governing board which initiated the ~~roadway~~ transportation corridor official map shall develop and adopt appropriate policies and procedures to govern ~~such~~ the advanced acquisition of right-of-way and to assure ~~such~~ that the advanced acquisition is in the best overall public interest.

(c) When a city makes an advanced right-of-way acquisition of property within a ~~roadway~~ transportation corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the city for the cost of ~~such~~ any advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The city shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a municipality is authorized to expend municipal funds for the protection of rights-of-way shown on a duly adopted ~~roadway~~ transportation corridor official map whether the right-of-way to be acquired is located inside or outside the municipal corporate limits.

"§ 136-44.54. Standard for appraisal of right-of-way within corridor.

The Department shall utilize the criteria contained in 49 C.F.R. § 24.103 (1997) when appraising right-of-way in a transportation corridor designated under this Article."

Section 2. G.S. 105-277.9 reads as rewritten:

"§ 105-277.9. Taxation of property inside certain roadway corridors.

Real property that lies within a ~~roadway~~ transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is

designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at twenty percent (20%) of the general tax rate levied on real property by the taxing unit in which the property is situated if:

(1) As of January 1, no building or other structure is located on the property; and

(2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor."

Section 3. G.S. 136-102.6(j) reads as rewritten:

"(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a ~~roadway~~ transportation corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article."

Section 4. G.S. 160A-458.4 reads as rewritten:

"**§ 160A-458.4. Designation of ~~roadway~~ transportation corridor official maps.**

Any city may establish ~~roadway~~ transportation corridor official maps and may enact and enforce ordinances pursuant to Article 2E of Chapter 136 of the General Statutes."

Section 5. G.S. 161-14 is amended by adding a new subsection to read:

"(c) Transportation corridor official maps authorized under Article 2E of Chapter 136 shall be registered and indexed by the end of the third business day after the business day the map is presented to the Register of Deeds."

Section 6. This act becomes effective October 1, 1998, and applies to transportation corridor official maps, or amendments to those maps, adopted on or after the effective date of this act.

file copy

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

x Committee Substitute #4 for
S.B. 1291 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION, REGIONAL PUBLIC TRANSPORTATION AUTHORITIES, AND REGIONAL TRANSPORTATION AUTHORITIES TO CREATE TRANSPORTATION CORRIDORS AND PROTECT THEM FROM DEVELOPMENT, AND TO INSURE PROPER NOTICE TO ALL PROPERTY OWNERS AFFECTED BY THE CORRIDORS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

x With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill #4

☐ 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

VISITOR REGISTRATION SHEET

Horse Pasture — Aug 18, 98 — AM

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
Lisa Martin	Upper Neuse River Basin Assn.
Gary W. Williams	The Williams Group
Mat Coiglstan	KSL Assoc.
Bobby Byan	RRC
Bob Slocum	NC Forestry Association
Fred Allen	NC Aggregates Assn.
MK Knollmeyer	
Clifton Metcalf	UNC GA
William Wong	Intern
Michelle Cook	Weyerhaeuser
Steve Brotherton	UNC-GA / NCSU Ag Pgm

VISITOR REGISTRATION SHEET

House Finance — Aug 19 98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Larry Tombaugh	NC State University
Anne Coan	NC Farm Bureau Federation
[illegible]	WLSR
[illegible]	OSBM
Amy Fullbright	Hunton & Williams
Andy Romanet	NCLM
Holly Hawkins	International Institute of Hair Design, Inc Raleigh, Cosmetologist
Betty Chambers	N.C. Aestheticians Association 300 Parkthrough Dr. Cary, NC 27511
Helen Pollard Frazier	N.C. Board of Cos. Art - Legislative Chairperson National Cos. Assn of N.C. Rol. N.C.
Douglas H. Van Essen	NC State Board of Cosmetic Art 1201 Front St, Ste 110 Raleigh, NC
Alex Williams	NC State Board of Cosmetology 1201-110 Front St. Raleigh, NC 27609
Wally Diggins	NC Sierra Club

VISITOR REGISTRATION SHEET

Horse Pasture — Aug 19 98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mike Cornett	NCDSA
J. Holman	DENR
Laura DeVos	DENR
VC McBride	~~NCSA~~
Hugh Tilson	NCHA
Steve Woodson	NCFB
David Knight	NC Sierra Club
W.H. Potter Jr	NC Physical Therapy Ass'n.
[illegible]	" " " "
Geri M. Hughes	" " " "
Joe Rudek	EDF
Tom Bean	NC WF

VISITOR REGISTRATION SHEET

House Finance — Aug 19 — 95

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jim Ritchy	TTA
Mark Beason	Capitol Group
Ruth Sappie	NCDOT
Doug Rog	NCDOT
Calvin Leggett	NCDOT
R. ROGERS	DENR
Stephanie Mann	NCAR
[illegible]	CPTC
Natalie Hastens	Charlotte Chamber
Kim Smith	NCLM
Bill Kellam	Moore - Van Allen
Francis M. Neal Jr.	DENR - DLR - LQS

VISITOR REGISTRATION SHEET

House Finance — Aug 19, 98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	A Transit
[signature]	NCMS
[signature]	NCHA
[signature]	SOS
Kelli Kulcsar	DuPont
Bill Scobee	NCBA

VISITOR REGISTRATION SHEET

After Session

House Finance — Aug 19, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	NC Association of County Commissioners
Ed Sansbury	Massage Therapist
M.K. Knollmeyer	Massage Therapist
Rick Rosen	Massage therapist
Tom Duncan	WCSR
Anne Coan	NC Farm Bureau Federation
Bernard Allen	SOS
Douglas N. Van Essen	NC State Board of Cosmetic Art
Mark A. Mitchell	N.C. State Board of Cosmetic Art
Sally Hamlin	Cosmetologist
Dee Williams	NC State Board of Cosmetology
D. Potter	NCPTA

after session

VISITOR REGISTRATION SHEET

House Finance — Aug 19, 98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Keith Bouchard	Health Ecology
Roland Vaughan	Guest of Rep. Daughtry
Suzanne Williams	NCCC
Wm Chris Riddick	DOR
Chris Keber	Little & Associates
Hugh Tilson	NCHA
Steve Keene	NCMS

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, AUGUST 18, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Tuesday, August 18, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Chairman Brawley called the meeting to order.

HB-1055 ARBITRATION OF SEED CLAIMS

Rep. Russell explained the bill. Rep. Capps moved for adoption of the proposed committee substitute for discussion. So moved. Rep. Brown spoke in favor of the bill and moved for a favorable report, unfavorable to the original bill. Having no discussion, the vote was taken and passed as moved.

HB-1490 EXTEND SUBMERGED LAND CLAIMS

Rep. Weatherly explained the bill. Rep. Dickson questioned the sponsor and he responded. Rep. Dickson moved for a favorable report. Rep. Luebke questioned staff about the fiscal note. Ms. Linda Millsaps, Fiscal Research Division, answered. Rep. Capps questioned the sponsor and he responded. The vote was taken and given a favorable report.

HB-1491 CONSERVATION TAX CREDITS

Rep. Weatherly explained the bill. Rep. McComas moved for a favorable report. The vote was taken and passed.

Chairman Brawley announced that **HB-1055 - ARBITRATION OF SEED CLAIMS** - needed to be brought back before the committee. The committee voted and it was back for discussion. Rep. Brown sent forth an amendment. The chairman read and explained. The vote was taken and it passed. Rep. Brown moved for a favorable report, unfavorable to the original bill. Ms. Avrette gave an additional explanation. Rep. Hackney questioned the legal ramifications. Mr. Weldon Denny, Department of Agriculture, addressed Rep. Hackney's questions and comments. The vote was taken and the bill was passed as moved.

Rep. Luebke questioned the explanation of **HB-1491** and felt that it moved to fast for members to get a full understanding. He moved to bring it back for discussion. So moved.

HB-1491 CONSERVATION TAX CREDITS

Discussion continued with Rep. Luebke questioning staff about the fiscal note and why a proposed committee substitute was drafted. Ms. Martha Walston, Fiscal Research Division, responded. Mr. George Givens, Research Division advised that it was drafted at the request of Rep. McComas. Rep. McComas then spoke on the bill. Ms. Camilla Heilwith, NC Coastal Land Trust, Wilmington, NC, addressed members at the request of Rep. McComas. Ms. Sabra Fairies, Department of Revenue, was asked if they had a position on this issue and she advised they did not. Rep. Luebke questioned Rep. McComas and he deferred to Ms. Kathy Treanor, Piedmont Land Conservancy, Greensboro, NC, who responded. Rep. Luebke spoke again and shared concerns. Rep. McComas moved for a favorable report, unfavorable to the original bill. The vote was taken and passed as moved.

SB-1241 AMENDMENTS TO REVENUE LAWS

Sen. Hoyle explained the bill. Rep. Cunningham had questions to which Sen. Hoyle answered. Ms. Sabre Fairies, Department of Revenue, addressed member and explained their position on the bill. Rep. Cunningham was concerned with the effective date and asked staff for clarification. Ms. Cindy Avrette, Research Division, responded. Rep. Hackney spoke on the bill. Rep. Cunningham sent forth an amendment to adjust the effective date. The vote was taken and the amendment passed.

Rep. Capps asked Ms. Fairies for clarification for Section 6 and she responded. Rep. McComas had questions regarding independent contractors. Ms. Avrette responded. Rep. McComas asked Ms. Fairies questions to which she replied. Sen. Hoyle spoke again and explained corporate officers. Rep. McComas spoke again. Ms. Avrette gave additional comments.

Rep. Dickson sent forth an amendment, explained and urged adoption. Rep. Jarrell spoke in favor of the amendment. Rep. Hackney requested more explanation. Ms. Avrette replied. Rep. Dickson spoke again. Rep. Hackney asked to hear from the County Commissioner's Association. Mr. Ron Aycock, County Commissioner's Association addressed members. Rep. Miller spoke on the amendment. Rep. Dickson addressed Rep. Miller's comments. Rep. Miller asked staff for clarification. Ms. Cindy Avrette explained. Dr. Regional Ponder, Non-Profit Association of Aging, addressed members. Rep. Goodwin had a series of questions for Dr. Ponder. Rep. Cunningham was concerned. Rep. Dickson addressed his concerns. Dr. Ponder was asked to address Rep.

Cunninghams concerns. Sen. Hoyle made additional comments. Rep. Hightower spoke on the amendment and offered support. Rep. Cole questioned staff and Ms. Avrette and Dr. Ponder responded. Rep. Hackney asked Ms. Fairies if this was constitutional and she responded. Ms. Stacy Flannery, Director of Public Policy, Non-Profit Home of the Aging, addressed members. Rep. Hackney cautioned members and felt that the information provided was not complete. Ms. Flannery spoke again and addressed his comments.

Time expired and it was announced to return at 12:30 to continue discussion. The meeting adjourned at 10:55.

Chairman Brawley called the meeting back to order at 12:30. Rep. Dickson sent forth a perfecting amendment and explained. Rep. Hackney questioned the effective date. Rep. Dickson agreed to change the date on the perfecting amendment. Rep. Luebke spoke in support. Rep. Goodwin then spoke. The vote was taken on the perfecting amendment and it passed. Rep. Dickson requested support of his amendment. The vote was taken on his first amendment and it passed.

Rep. Hackney sent forth an amendment and explained. Sen. Hoyle spoke on the amendment. Rep. Goodwin spoke in support of the amendment. The vote was taken and the amendment was adopted.

The vote was taken on the bill and passed with a favorable report, unfavorable to the original bill.

The meeting adjourned at 12:55 p.m.

Robert Brawley
Rep. Brawley, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

TUESDAY, AUGUST 18, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. C. Wilson

BILLS FOR DISCUSSION:

HB-1055 Arbitration of Seed Claims	Rep. Russell
HB-1490 Extend Submerged Land Claims	Rep. Weatherly
HB-1491 Conservation Easements Tax Credit	Rep. Weatherly
SB-1241 Amendments to Revenue Laws	Sen. Hoyle

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1055*
Committee Substitute Favorable 6/4/97
Proposed Committee Substitute H1055-CSLD-1
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Arbitration of Seed Claims. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MANDATORY ARBITRATION OF CLAIMS RELATED TO DEFECTIVE SEED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.29 is repealed.

Section 2. Article 31 of Chapter 106 of the General Statutes is amended by adding the following new sections:

"§ 106-277.30. Condition precedent to filing an action; notice required.

(a) Complaint by Buyer. -- When a buyer has reasonable cause to believe that he or she has suffered damages due to the failure of agricultural seeds or vegetable seeds to produce or perform as labeled, as warranted, or as a result of negligence, the buyer shall make a complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner of Agriculture within such time as to permit inspection of the seeds, crops, or plants. The buyer shall send a copy of the complaint to the dealer by certified or registered mail. A filing fee of one hundred dollars ($100.00) shall be paid to the Department of Agriculture and Consumer Services with each

complaint filed. This fee may be used by the Commissioner to offset the expenses of the arbitration committee incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by certified or registered mail.

(b) Notice Required. -- The seed dealer shall legibly print or type on the seed container or affix a label on the seed container a notice in the following form or using reasonably equivalent language:

'Notice of Mandatory Arbitration

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions against a seller of seed. Information about this requirement where applicable, may be obtained from a State's Commissioner of Agriculture or corresponding chief agricultural official.'

(c) Condition Precedent. -- Complying with subsection (a) of this section is a condition precedent to the buyer's right to file an action against the seed dealer. This subsection does not apply if the seed dealer fails to provide notice as required under subsection (b) of this section.

(d) Investigation Requested by Seed Dealer. -- Any seed dealer who has received notice, either orally or in writing, that a buyer has reasonable cause to believe that he or she has suffered damage due to the failure of agricultural seeds or vegetable seeds sold by the dealer to perform as labeled, as warranted, or as a result of negligence, may request an investigation by the arbitration committee pursuant to G.S. 106-277.32. A filing fee of one hundred dollars ($100.00) shall be paid to the Department of Agriculture and Consumer Services by the party requesting the investigation. The dealer shall send a copy of the request to the buyer by certified or registered mail. The buyer may file a response to the request with the Commissioner of Agriculture within 10 days of receipt of the request for an investigation.

(e) Referral to Committee. -- The Commissioner of Agriculture shall refer the complaint and the answer to the complaint, if any, to the arbitration committee to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32.

"§ 106-277.31. Arbitration committee created; membership; duties.

(a) The Commissioner of Agriculture shall appoint an arbitration committee composed of five members, three of whom shall be appointed upon the recommendation of the following:

Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department of Agriculture and Consumer Services. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the committee shall serve until replaced by the Commissioner of Agriculture. The committee shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the committee.

(b) A clerk shall be appointed to serve the committee. The clerk shall be an employee of the Department of Agriculture and Consumer Services. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the committee as directed by the chairperson.

(c) The purpose of the arbitration committee is to assist seed buyers and seed dealers in determining the matters alleged in complaints made by buyers against seed dealers.

(d) The arbitration committee may be called into session by the Commissioner of Agriculture at the Commissioner's discretion or upon the direction of the chairperson to consider the matters referred to it by the Commissioner of Agriculture.

(e) The Department shall provide administrative support for the investigation under this section. The committee shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(f) Members of the committee appointed by the Commissioner who are not State employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Other members of the committee shall not be entitled to any compensation or reimbursement of expenses from the Department of Agriculture and Consumer Services.

(g) The Attorney General shall represent the committee in any and all legal proceedings that may arise concerning or against the committee.

"**§ 106-277.32. Duties of arbitration committee.**

(a) In conducting its investigation of claims referred by the Commissioner of Agriculture, activities of the arbitration committee may include any of the following:

(1) Examine the buyer regarding the buyer's use of the seeds of which the buyer complains and examine the seed dealer on the dealer's packaging, labeling, and selling of the seeds alleged to be faulty.
(2) Grow a representative sample of the alleged faulty seeds to production when such action is deemed by the committee to be necessary.
(3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the seed dealer.
(4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the committee.
(5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The committee shall keep a record of its activities and reports on file in the Department of Agriculture and Consumer Services. The Department shall transmit all findings and recommendations to the buyer and to the seed dealer within 30 days of completion of the arbitration.

(c) No investigation shall be made by less than the whole membership of the committee unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations.

(d) The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in writing subsequent to the filing of a complaint pursuant to G.S. 106-277.30.

"**§ 106-277.33. Filing an action regarding a defective seed claim.**

(a) In the absence of an agreement to be bound by arbitration, a buyer may file an action against a seed seller or assert such claim as a counterclaim or defense in any action brought by the seed seller at any time after the receipt of the report of arbitration under G.S. 106-277.32.

(b) In any court action involving a complaint that has been the subject of an investigation under G.S. 106-277.32, any party may introduce evidence of seed quality, cultivation practices and procedures, and scientific opinion contained in the report of the arbitration committee. Statements of the parties and recommendations of the arbitration committee as resolution of the dispute are not admissible as evidence unless such evidence is otherwise discoverable."

Section 3. There is appropriated from the General Fund to the Department of Agriculture and Consumer Services the sum of ten thousand dollars ($10,000) for the 1998-99 fiscal year to be used to implement and administer this act.

Section 4. This section of this act and G.S. 106-277.31, as enacted by Section 2 of this act, are effective when they become law. Section 3 of this act becomes effective July 1, 1998. The remainder of this act becomes effective December 1, 1998 and applies to complaints filed with the Commissioner of Agriculture pursuant to this act on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1055*
Committee Substitute Favorable 6/4/97

Short Title: Arbitration of Seed Claims. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MANDATORY ARBITRATION OF CLAIMS RELATED TO DEFECTIVE SEED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.29 is repealed.

Section 2. Article 31 of Chapter 106 of the General Statutes is amended by adding the following new sections:

"**§ 106-277.30. Condition precedent to filing an action; notice required.**

(a) Complaint by Buyer. -- When a buyer believes that he or she has suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled, as warranted, or as a result of negligence, the buyer shall make a sworn complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner of Agriculture within such time as to permit inspection of the seed, crops, or plants. The buyer shall send a copy of the complaint to the dealer by registered mail. A filing fee of one hundred dollars ($100.00) shall be paid to the Commissioner of Agriculture with each complaint filed. This fee may be used by the Commissioner to offset the expenses of the arbitration committee incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by registered mail.

(b) Notice Required. -- The seed dealer shall legibly print or type on the seed container or affix a label on the seed container a notice in the following form or using reasonably equivalent language:

'Notice of Mandatory Arbitration

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions against a seller of seed. Information about this requirement where applicable, may be obtained from a State's Commissioner of Agriculture or corresponding chief agricultural official.'

(c) Condition Precedent. -- Complying with subsection (a) of this section is a condition precedent to the buyer's right to file an action against the seed dealer. This subsection does not apply if the seed dealer fails to provide notice as required under subsection (b) of this section.

(d) Investigation Requested by Seed Dealer. -- Any seed dealer against whom an action is brought in any court, State or federal, by a buyer who alleges that the buyer has suffered damages due to the failure of seeds purchased from a seed dealer to perform as labeled, as warranted, or as a result of negligence may request an investigation by the arbitration committee pursuant to G.S. 106-277.32. A filing fee of one hundred dollars ($100.00) shall be paid to the Department of Agriculture by the party requesting the investigation.

(e) Referral to Committee. -- The Commissioner of Agriculture shall refer the complaint and the answer to the complaint, if any, to the arbitration committee to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32.

"**§ 106-277.31. Arbitration committee created; membership; duties.**

(a) The Commissioner of Agriculture shall appoint an arbitration committee composed of five members, three of whom shall be appointed upon the recommendation of the following: Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department of Agriculture. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the committee shall serve until replaced by the Commissioner of Agriculture. The committee shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the committee.

(b) A clerk shall be appointed to serve the committee. The clerk shall be an employee of the Department of Agriculture. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the committee as directed by the chairperson.

(c) The purpose of the arbitration committee is to assist seed buyers and agricultural seed dealers in determining the matters alleged in complaints made by buyers against seed dealers.

(d) The arbitration committee may be called into session by the Commissioner of Agriculture at the Commissioner's discretion or upon the direction of the chairperson to consider the matters referred to it by the Commissioner of Agriculture.

(e) The Department shall provide administrative support for the investigation under this section. The committee shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(f) Members of the committee appointed by the Commissioner who are not governmental employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Other members of the committee shall not be entitled to any compensation or reimbursement of expenses from the Department of Agriculture.

(g) The Attorney General shall represent the committee in any and all legal proceedings that may arise concerning or against the committee.

"**§ 106-277.32. Duties of arbitration committee.**

(a) In conducting its investigation of claims referred by the Commissioner of Agriculture, the arbitration committee may engage in all of the following activities:

(1) Examine the buyer regarding the buyer's use of the seed of which the buyer complains and examine the seed dealer on the dealer's packaging, labeling, and selling of the seed alleged to be faulty.

(2) Grow a representative sample of the alleged faulty seed to production when such action is deemed by the committee to be necessary.

(3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the seed dealer.

(4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the committee.

(5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The committee shall keep a record of its activities and reports on file in the Department of Agriculture. The Department shall transmit all findings and recommendations to the buyer and to the seed dealer within 30 days of completion of the arbitration.

(c) No investigation shall be made by less than the whole membership of the committee unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations.

(d) The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in writing subsequent to the filing of a complaint pursuant to G.S. 106-277.30.

"**§ 106-277.33. Filing an action regarding a defective seed claim.**

(a) In the absence of an agreement to be bound by arbitration, a buyer may file an action against a seed seller or assert such claim as a counterclaim or defense in any action brought by the seed seller at any time after the receipt of the report of arbitration under G.S. 106-277.32.

(b) In any action involving a complaint that has been the subject of arbitration under G.S. 106-277.32, any party may introduce the report of arbitration as evidence of the facts found in the report, and the court may give such weight to the committee's findings and conclusions of law and recommendations as to damages and costs as the court deems appropriate, based upon all the evidence before the court. The court may consider any finding of the committee with respect to the failure of any party to cooperate in the arbitration proceedings, including any finding as to the effect of delay in filing the arbitration claim upon the committee's ability to determine the facts of the case."

Section 3. There is appropriated from the General Fund to the Department of Agriculture the sum of ten thousand dollars ($10,000) for the 1997-98 fiscal year and the sum of ten thousand dollars ($10,000) for the 1998-99 fiscal year to be used to implement and administer this act.

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

EXPLANATION OF HOUSE BILL 1055:
Arbitration of Seed Claims (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 10, 1998
SPONSOR: Representative Carolyn Russell

House Bill 1055 provides for mandatory, but non-binding arbitration of disputes between a buyer of seed and seed dealers. Section 1 repeals the current voluntary system North Carolina has and replaces it in Section 2 with a substantially similar, but mandatory one. Section 3 appropriates money from the General Fund to the Department of Agriculture to administer the mandatory arbitration. Section 4 provides that the act becomes effective July 1, 1997.

Under the bill, seed dealers would be required to provide notice of mandatory arbitration by placing notice on the seed container. If the notice is provided, a buyer of seed would be required to seek arbitration on issues involving defective seed before the buyer could initiate a court action. To initiate arbitration, the buyer must make a sworn complaint against the seed dealer, file the complaint with the Commissioner of Agriculture within time to permit the arbitration committee to inspect the seed, crops, or plants alleged to be defective before they are destroyed, and pay a filing fee of $100.

The arbitration committee has substantially the same membership as the current investigation committee: representatives of farm groups, seed companies, universities, and the Department of Agriculture, and one farmer who is not connected in any way to selling seeds at retail or wholesale. The arbitration committee will address issues which are technical in nature: the buyer's use of the seed, the seed dealer's packaging of the see, an evaluation of the seed's product, an inspection of the affected site, etc. The arbitration report is binding upon all parties IF the parties have agreed in writing that it will be binding. In the absence of such an agreement, a court action may be initiated by either party. At least 16 other states have similar legislation, including South Carolina and Georgia.

Technical Considerations:

- The effective date needs to be changed. If the Department is given the authority to adopt temporary rules to implement the bill, then the effective date can be as early as January 1, 1999. If the Department is not given the

authority to adopt temporary rules, the effective date will need to be at least July 1, 2000, to enable the Department to complete the rules review process.

- The appropriation needs to be examined.
- G.S. 106-277.30(d) allows a seed dealer to request an investigation by the arbitration committee if an action is brought in court. Is this section needed if the arbitration is required before a court action can be initiated?

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: H.B. 1055 CS 6/4/97

SHORT TITLE: Arbitration of Seed Claims

SPONSOR(S): Representative Russell

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	$1,850	$3,900	$4,100	$4,300	$4,500
EXPENDITURES	$10,000	$10,000			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Agriculture.

EFFECTIVE DATE: (See Technical Considerations).

BILL SUMMARY: The bill requires the parties involved in a disagreement about the quality of agricultural seeds to participate in special arbitration. The bill directs the Agriculture Commissioner to appoint a five-member arbitration committee. Three members will be appointed on the recommendations of the NCSU Agricultural Research Service Director, the Cooperative Extension Director, and the President of the North Carolina Seedmen's Association. The bill also directs the Commission to appoint one farmer (not connected to seed sales) and one Department employee to the arbitration committee. The committee must conduct an investigation when they receive a complaint from a buyer or a request for investigation from a dealer. The bill requires that the complaint be filed within a time period that allows for inspection of the affected seed, crops, or plants. Both dealers and buyers must pay a $100 fee when filing their complaint or request for investigation. Once a buyer files a complaint, the Department will notify the dealer and give that dealer ten days to file a response. After the 10 day period, the arbitration committee will begin their investigation, following the guidelines in the bill. The findings of the arbitration committee are binding if the buyer and dealer have

agreed, in advance, to abide by the decision of the committee. Under the bill, the decision of the buyer to purchase a product, with a special label outlining the arbitration requirement, constitutes an agreement to arbitration. (It does not constitute an agreement to binding arbitration, unless the parties all agree to binding arbitration in advance.) If legal action is taken by either party after the committee completes its investigation, the committee's findings are admissible as evidence. Under the bill, the court can take into account either party's failure to cooperate in arbitration, or the impact of any party's attempt to delay the committee's investigation. The bill also appropriates $10,000 each year, for two years, to implement the act.

ASSUMPTIONS AND METHODOLOGY: According to the Department of Agriculture's legal staff, Georgia is the only state with a seed arbitration program substantially similar to the bill. The Georgia seed arbitration program has been in operation for three years. The Georgia program received eight (8) complaints or requests for investigation in 1995, fifteen (15) in 1996, and thirty (30) in 1997. They also report receiving more than 30 complaints and/or requests for investigation, so far, in 1998. Based on these estimates, and the relative size of the seed market, the North Carolina Department of Agriculture estimates that they will receive twenty-five (25) buyer complaints and twelve (12) dealer requests for investigation. Assuming each buyer and dealer pays the $100.00 filing fee, the bill will generate $3,700 in FY 1998-9 (37 Total complaints and requests for investigation X $100). One-half of this amount is shown in the fiscal impact chart, as this note assumes a January 1, 1999, effective date for this section of the bill (see Technical Considerations).

The North Carolina Department of Agriculture expects the number of complaints and/or requests for investigation to increase with the continued development of genetically modified crop varieties. These new varieties are resistant to pests and tolerate certain herbicides. Because these genetically modified seeds are more expensive (Since the introduction of these genetically modified seeds three years ago, national farm expenditures for seeds have increased an average of 7.5% per year.), and the risks associated with non-performance greater, farmers are likely to seek compensation for seed failure. This note assumes 5% annual growth in the number of filings.

Officials with the North Carolina Department of Agriculture believe the costs associated with the bill will be approximately $10,000. The Department believes this amount is necessary to cover the meals and per diem expenses associated with board members who are not state employees, and staff travel for investigations. They also note that the bill creates some overhead expense.

TECHNICAL CONSIDERATIONS: The bill's current effective date is July 1, 1997. This is not feasible. As such, the note assumes a July 1, 1998, effective date for 106-277.31 (arbitration committee created) and a January 1, 1999, effective date for filings.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:
DATE: August 5, 1998

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1055 - PCS DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Brown
Sen.)

moves to amend the bill on page 5, line 1-4

( ) WHICH CHANGES THE TITLE

by deleting Section 3 and on page 5, line 5, by deleting "Section 4" and substituting "Section 3";

and on page 5, lines 7 and 8, by deleting the sentence that begins on line 7.

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1055*
Committee Substitute Favorable 6/4/97
Proposed Committee Substitute H1055-PCS3177-LD2

Short Title: Arbitration of Seed Claims. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MANDATORY ARBITRATION OF CLAIMS RELATED TO DEFECTIVE SEED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.29 is repealed.

Section 2. Article 31 of Chapter 106 of the General Statutes is amended by adding the following new sections:

"**§ 106-277.30. Condition precedent to filing an action; notice required.**

(a) Complaint by Buyer. -- When a buyer has reasonable cause to believe that he or she has suffered damages due to the failure of agricultural seeds or vegetable seeds to produce or perform as labeled, as warranted, or as a result of negligence, the buyer shall make a complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner of Agriculture within such time as to permit inspection of the seeds, crops, or plants. The buyer shall send a copy of the complaint to the dealer by certified or registered mail. A filing fee of one hundred dollars ($100.00) shall be paid to the Department of Agriculture and Consumer Services with each complaint filed. This fee may be used by the Commissioner to offset the expenses of the arbitration committee incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by certified or registered mail.

(b) Notice Required. -- The seed dealer shall legibly print or type on the seed container or affix a label on the seed container a notice in the following form or using reasonably equivalent language:

'Notice of Mandatory Arbitration

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions against a seller of seed. Information about this requirement where applicable, may be obtained from a state's Commissioner of Agriculture or corresponding chief agricultural official.'

(c) Condition Precedent. -- Complying with subsection (a) of this section is a condition precedent to the buyer's right to file an action against the seed dealer. This subsection does not apply if the seed dealer fails to provide notice as required under subsection (b) of this section.

(d) Investigation Requested by Seed Dealer. -- Any seed dealer who has received notice, either orally or in writing, that a buyer has reasonable cause to believe that he or she has suffered damage due to the failure of agricultural seeds or vegetable seeds sold by the dealer to perform as labeled, as warranted, or as a result of negligence, may request an investigation by the arbitration committee pursuant to G.S. 106-277.32. A filing fee of one hundred dollars ($100.00) shall be paid to the Department of Agriculture and Consumer Services by the party requesting the investigation. The dealer shall send a copy of the request to the buyer by certified or registered mail. The buyer may file a response to the request with the Commissioner of Agriculture within 10 days of receipt of the request for an investigation.

(e) Referral to Committee. -- The Commissioner of Agriculture shall refer the complaint and the answer to the complaint, if any, to the arbitration committee to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32.

"§ 106-277.31. Arbitration committee created; membership; duties.

(a) The Commissioner of Agriculture shall appoint an arbitration committee composed of five members, three of whom shall be appointed upon the recommendation of the following: Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department of Agriculture and Consumer Services. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the committee shall serve until replaced by the Commissioner of Agriculture. The committee shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the committee.

(b) A clerk shall be appointed to serve the committee. The clerk shall be an employee of the Department of Agriculture and Consumer Services. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the committee as directed by the chairperson.

(c) The purpose of the arbitration committee is to assist seed buyers and seed dealers in determining the matters alleged in complaints made by buyers against seed dealers.

(d) The arbitration committee may be called into session by the Commissioner of Agriculture at the Commissioner's discretion or upon the direction of the chairperson to consider the matters referred to it by the Commissioner of Agriculture.

(e) The Department shall provide administrative support for the investigation under this section. The committee shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(f) Members of the committee appointed by the Commissioner who are not State employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Other members of the committee shall not be entitled to any compensation or reimbursement of expenses from the Department of Agriculture and Consumer Services.

(g) The Attorney General shall represent the committee in any and all legal proceedings that may arise concerning or against the committee.

"**§ 106-277.32. Duties of arbitration committee.**

(a) In conducting its investigation of claims referred by the Commissioner of Agriculture, activities of the arbitration committee may include any of the following:

(1) Examine the buyer regarding the buyer's use of the seeds of which the buyer complains and examine the seed dealer on the dealer's packaging, labeling, and selling of the seeds alleged to be faulty.

(2) Grow a representative sample of the alleged faulty seeds to production when such action is deemed by the committee to be necessary.

(3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the seed dealer.

(4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the committee.

(5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The committee shall keep a record of its activities and reports on file in the Department of Agriculture and Consumer Services. The Department shall transmit all findings and recommendations to the buyer and to the seed dealer within 30 days of completion of the arbitration.

(c) No investigation shall be made by less than the whole membership of the committee unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations.

(d) The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in writing subsequent to the filing of a complaint pursuant to G.S. 106-277.30.

"**§ 106-277.33. Filing an action regarding a defective seed claim.**

(a) In the absence of an agreement to be bound by arbitration, a buyer may file an action against a seed seller or assert such claim as a counterclaim or defense in any action brought by the seed seller at any time after the receipt of the report of arbitration under G.S. 106-277.32.

(b) In any court action involving a complaint that has been the subject of an investigation under G.S. 106-277.32, any party may introduce evidence of seed quality, cultivation practices and procedures, and scientific opinion contained in the report of the arbitration committee. Statements of the parties and recommendations of the arbitration committee as resolution of the dispute are not admissible as evidence unless such evidence is otherwise discoverable."

Section 3. This section of this act and G.S. 106-277.31, as enacted by Section 2 of this act, are effective when they become law. The remainder of this act becomes effective December 1, 1998, and applies to complaints filed with the Commissioner of Agriculture pursuant to this act on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1055*
Committee Substitute Favorable 6/4/97
Proposed Committee Substitute H1055-PCS3177-LD2

Short Title: Arbitration of Seed Claims. (Public)

Sponsors:

Referred to:

April 21, 1997

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(c) Condition Precedent. -- Complying with subsection (a) of this section is a condition precedent to the buyer's right to file an action against the seed dealer. This subsection does not apply if the seed dealer fails to provide notice as required under subsection (b) of this section.

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1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☒ Committee Substitute for
H.B. 1055 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE MANDATORY ARBITRATION OF CLAIMS RELATED TO DEFECTIVE SEED.

☐ 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.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1490*

Short Title: Extend Submerged Lands Claims. (Public)

Sponsors: Representative Weatherly.

Referred to: Environment.

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE TIME FOR THE RESOLUTION OF CLAIMS TO LAND UNDER NAVIGABLE WATERS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-206 reads as rewritten:

"**§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.**

(a) The Secretary must commence to prepare as expeditiously as possible charts of the waters of North Carolina containing the locations of all oyster and clam leaseholds made by the Department under the provisions of this Article and of all existing leaseholds as they are renewed under the provisions of this Article, the locations of all claims of grant of title to portions of the bed under navigable waters registered with him, and the locations of all areas in navigable waters to which a right of private fishery is claimed and registered with him. Charting or registering any claim by the Secretary in no way implies recognition by the State of the validity of the claim.

(a1) If a claim is based on an oyster or other shellfish grantor a perpetual franchise for shellfish cultivation, the Secretary may, to resolve the claim, grant a shellfish lease to the claimant for part or all of the area claimed. If a claim of exclusive shellfishing rights was registered based upon a conveyance by the Literary Fund, the North Carolina Literary Board or the State Board of Education, and the claimant shows that the area had been cultivated by the claimant or his predecessor in title for the seven-year period prior to registration of the claim, the Secretary may,

to resolve the claim, grant a shellfish lease to the claimant for all or part of the area claimed, not to exceed ten acres. A shellfish lease granted under this subsection is subject to the restrictions imposed on shellfish leases in G.S. 113-202, except the prohibition against leasing an area that contains a natural shellfish bed in G.S. 113-202(a)(2). This restriction is waived because, due to the cultivation efforts of the claimant, the area is likely to contain a natural shellfish bed.

(b) In the event of any overlapping of areas leased by the Department, the Secretary shall recommend modification of the areas leased as he deems equitable to all parties. Appeal from the recommendation of the Secretary lies for either party in the same manner as for a lease applicant as to which there is a recommendation of denial or modification of lease. If there is no appeal, or upon settlement of the issue upon appeal, the modified leases must be approved by the Marine Fisheries Commission and reissued by the Secretary in the same manner as initial or renewal leases. Leaseholders must furnish the Secretary surveys of the modified leasehold areas, meeting the requisite criteria for surveys established by the Secretary.

(c) In the event of any overlapping of areas leased by the Department and of areas in which title or conflicting private right of fishery is claimed and registered under the provisions of this Article, the Secretary must give preference to the leaseholder engaged in the production of oysters or clams in commercial quantities who received the lease with no notice of the existence of any claimed grant or right of fishery. To this end, the Secretary shall cause a modification of the claim registered with him and its accompanying survey to exclude the leasehold area. Such modification effected by the Secretary has the effect of voiding the grant of title or right of fishing to the extent indicated.

(d) In the interest of conservation of the marine and estuarine resources of North Carolina, the Department may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Secretary. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the trier of fact shall fix the monetary worth of the claim. The Department may elect to condemn the claim upon payment of the established owners or right holders their pro rata shares of the amount so fixed. The Department may make such payments from such funds as may be available to it. An appeal lies to the appellate division by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Department in such actions may be represented by the Attorney General. In determining the availability of funds to the Department to underwrite the costs of litigation or make condemnation payments, the use which the Department proposes to make of the area in question may be considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner.

(e) A person who claims that the application of G.S. 113-205 or this section has deprived him of his private property rights in land under navigable waters or his right of fishery in navigable waters without just compensation may file a complaint in the

superior court of the county in which the property is located to contest the application of G.S. 113-205 or this section. If the plaintiff prevails, the trier of fact shall fix the monetary worth of the claim, and the Department may condemn the claim upon payment of this amount to him if the Secretary considers condemnation appropriate and necessary to conserve the marine and estuarine resources of the State. The Department may pay for a condemned claim from available funds. An action under this subsection is considered a condemnation action and is therefore subject to G.S. 7A-248.

The limitation period for an action brought under this subsection is three years. This period is tolled during the disability of the plaintiff. No action, however, may be instituted under this subsection after ~~December 31, 2001.~~ 31 December 2006.

(f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall favor public ownership of submerged lands and public trust rights. The Secretary's action does not alter or affect in any way the rights of a claimant or the State.

To facilitate resolution of claims registered pursuant to G.S. 113-205, the Secretary, in cooperation with the Secretary of Administration and the Attorney General, shall establish a plan to resolve these claims by ~~December 31, 1998.~~ 31 December 2003. The Secretary shall notify the Secretary of Administration and the Attorney General of the resolution of each claim. In addition, on or before October 1 of each year, the Secretary shall submit a report to the Joint Legislative Commission on Governmental Operations stating the following:

(1) The number of claims registered pursuant to G.S. 113-205 that were resolved during the preceding year;
(2) The cost of resolving these claims;
(3) The number of unresolved claims; and
(4) Payments made to acquire claims by condemnation."

Section 2. G.S. 105-151.12(e) reads as rewritten:

"(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before ~~December 31, 1998,~~ 31 December 2003 to qualify for the credit allowed by this section."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1490

SHORT TITLE: Extend Submerged Lands Claims

SPONSOR(S): Representative Weatherly

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available (X)**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	**0**	**($100,000)**	**($100,000)**	**($100,000)**	**($100,000)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Marine Fisheries, Department of Environment and Natural Resources.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill extends three deadlines related to submerged land claims. First, the bill extends until December 31, 2006, the time allowed to file a submerged land claim. Under current law that period closes on December 31, 2001. As such, the bill gives the potential plaintiff five more years to take action. Second, the bill gives the Department of Environment and Natural Resources until December 31, 2003, to establish a plan to resolve submerged land claims. Under current law, the Department's time expires on December 31, 1998. Third, the bill extends the date by which claimed marshlands must be donated to qualify for a tax credit under G.S. 105-151,12 from December 31, 1998, to December 31, 2003.

ASSUMPTIONS AND METHODOLOGY: The only change in the bill that may have a fiscal impact is the extension of time to claim a tax credit. Under G.S. 105-151.12(e), a person who makes a "qualified" donation of claimed marshland can take an income tax credit of up to 25% of the fair market value of the land. The credit can not exceed $100,000. Any unused portion of the credit may be carried forward for five years. To "qualify" a donation must be accepted by the state. The tax credit for the marshland donations portion of G.S. 105-151.12(e) sunsets on December 31, 1998. Under current law, the claim to marshland must be made by that date to be

eligible for a tax credit, if the land is donated. The bill extends this portion of G.S. 105-151.12(e) to December 31, 2003.

In calendar year 1996 (the most recent year for which data is available) only one organization took advantage of the submerged lands credit. That donation was of 1,143.5 acres. The donor estimated the value of the property at $205,000. Under current law that donation would create a $51,250.00 tax credit. (However, because the credit cap for this program was at $25,000 in 1996, the total liability associated with this claim was $25,000). Officials from Marine Fisheries have processed claims for approximately 11,000 acres since 1985. They processed less than one claim per year under the program. State officials are only aware on one project that is "in the pipeline" at this time, but more are possible. They do not believe last session's action to increase the credit cap has had a significant impact on this portion of the conservation program.

Assuming one claim is filed per year, and the maximum tax credit applies, the loss is $100,000 per year.

The Department currently absorbs the cost of the program out of existing resources, and expects to be able to continue the program without additional appropriations.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:
DATE: August 17, 1998

EXPLANATION OF HOUSE BILL 1490:
Extend Submerged lands Claims

TO: House Finance Committee
FROM: Martha Walston and Jeff Hudson, Staff Attorneys
DATE: August 17, 1998
SPONSOR: Representative Weatherly

House Bill 1490 is a recommendation of the Environmental Review Commission. House Bill 1490 was also reviewed by the Joint Legislative Commission on Seafood and Aquaculture. The companion to House Bill 1490, Senate bill 1274, was introduced in the Senate by Senator Albertson.

House Bill 1490 was requested by the Department of Environment and Natural Resources (DENR) in order to provide more time for DENR, in conjunction with the Attorney General's Office, to resolve outstanding submerged land claims.

Section 1 extends the date by which a submerged lands claim must be instituted from December 31, 2001 to December 31, 2006. This section also extends the date by which the Secretary of DENR must establish a plan to resolve submerged lands claims from December 31, 1998 to December 31, 2003.

Section 2 extends the date by which marshland claimed under the submerged lands claims statutes must be donated in order to qualify for a tax credit under G.S. 105-151.12. from December 31, 1998 to December 31, 2003. This is a tax credit in the amount of 25% of the donated property interest and may not exceed $100,000.

Section 3 makes this act effective when it becomes law.

A submerged land claim is one whereby a person alleges that he has been deprived of his private property rights in lands under navigable waters or his right of fishery in navigable waters without just compensation If the claimant prevails, DENR may condemn the property and pay the claimant the worth of his claim. The courts have applied the public trust doctrine in these instances. This doctrine favors public ownership of submerged lands.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☐ Committee Substitute for
H.B. 1490 A BILL TO BE ENTITLED AN ACT TO EXTEND THE TIME FOR THE RESOLUTION OF CLAIMS TO LAND UNDER NAVIGABLE WATERS, 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.

☐ 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 1491*
Committee Substitute Favorable 7/15/98
Proposed Committee Substitute H1491-PCS3176-RT003

Short Title: Amend Conservation Tax Credits. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT THAT AN INDIVIDUAL INCOME TAXPAYER ADD BACK TO TAXABLE INCOME THE FAIR MARKET VALUE OF REAL PROPERTY DONATED FOR CONSERVATION PURPOSES IN ORDER TO CLAIM THE INCOME TAX CREDIT FOR THE DONATION OF THAT PROPERTY AND TO INCREASE THE MAXIMUM TAX CREDIT THAT MAY BE CLAIMED BY A CORPORATION AND BY AN INDIVIDUAL FOR A DONATION OF REAL PROPERTY FOR CONSERVATION PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. -- The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

(1) Interest upon the obligations of states other than this State, political subdivisions of those states, and agencies of those states and their political subdivisions.

(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code.

(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax to the extent that the

taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.

(4) The amount by which the taxpayer's standard deduction has been increased for inflation under section 63(c)(4)(A) of the Code.

(4a) **(Effective for taxable years beginning on or after January 1, 1995)** The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the Code. This amount is reduced by two hundred fifty dollars ($250.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

(4a) **(Effective for taxable years beginning on or after January 1, 1996)** The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the Code. This amount is reduced by five hundred dollars ($500.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

(5) The ~~fair market value, up to a maximum of four hundred thousand dollars ($400,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12~~

~~and the~~ market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14.

(6) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property.

(7) The amount of federal estate tax that is attributable to an item of income in respect of a decedent and is deducted from gross income under section 691(c) of the Code."

Section 2. G.S. 105-151.12(c) is repealed.

Section 3. G.S. 105-130.34(a) reads as rewritten:

"(a) Any corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes is allowed a credit against the tax imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed ~~two hundred fifty thousand dollars ($250,000).~~ five hundred thousand dollars ($500,000). To support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection."

Section 4. G.S. 105-151.12(a) reads as rewritten:

"(a) A person who makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes is allowed a credit against the tax imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed ~~one hundred thousand dollars ($100,000).~~ two hundred fifty thousand dollars ($250,000). To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit

is claimed a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection."

Section 5. This act becomes effective for taxable years beginning on or after 1 January 1999.

EXPLANATION OF HOUSE BILL 1491(PCS):
Amend Conservation Tax Credits

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 17, 1998
SPONSOR: Representative Hackney

House Bill 1491 is a recommendation of the Environmental Review Commission. The companion bill to House Bill 1491(Senate Bill 1316) was introduced in the Senate by Senator Kinnaird.

Under current law, a tax credit is allowed to both individual and corporate taxpayers who make a qualified donation of an interest in North Carolina real property that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes. The tax credit is equal to 25% of the fair market value of such property donated to the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions. The credit allowed to an individual taxpayer may not exceed $100,000, and any unused portion may be carried forward 5 years. However, in order to claim the credit, the individual taxpayer must add back to the taxpayer's taxable income, the fair market value of the donated property interest up to a maximum of $400,000. The credit allowed to a corporate taxpayer may not exceed $250,000, and any unused portion may be carried forward 5 years. That portion of a corporation's qualifying donation that is the basis for a credit is not eligible for deduction as a charitable contribution.

The proposed committee substitute for House bill 1491 deletes the add back requirement to an individual's taxable income, increases a corporate taxpayer's credit limit from $250,000 to $500,000, and increases an individual taxpayer's credit limit from $100,000 to $250,000.

The act applies to taxable years beginning on or after January 1, 1999.

<u>History of conservation easements tax credit</u>

The conservation easements tax credit was enacted in 1983. The General Assembly did not want an individual to receive a double tax benefit for the donation, so they prohibited a charitable contribution deduction for the portion of the donation used to calculate the tax credit. In 1989, federal taxable income became the starting point in determining North Carolina taxable income. In order to maintain a single tax benefit, an addition to the federal taxable income in

the year of the donation was required for the fair market value of the donated property. This add-back can be a disincentive to donating property in two cases:

(1) If the taxpayer never deducts the entire fair market value of the donation as a charitable deduction; or

(2) If the taxpayer never claims the entire tax credit for the donation.

The first situation can occur because federal law imposes limitations on the amount of charitable contributions deductions in any year based on the taxpayer's adjusted gross income. The second situation can occur because the taxpayer may be unable to claim the entire amount of the credit within the 6 year period. House Bill 1491 proposes to remedy this disincentive to make a donation by no longer requiring an individual taxpayer to add the fair market value of the donated property to federal taxable income in arriving at North Carolina taxable income. The Department of Revenue indicates that this change would result in a taxpayer receiving both a charitable contribution deduction and a tax credit for the donation. The Department points out that only one other tax credit, the tax credit for gleaned crop, has a similar add-back requirement, and that many other tax credits are provided without addressing possible double benefits.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1491*
Committee Substitute Favorable 7/15/98

Short Title: Amend Conservation Easements Tax Credit. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT THAT AN INDIVIDUAL INCOME TAXPAYER ADD BACK TO TAXABLE INCOME THE FAIR MARKET VALUE OF REAL PROPERTY DONATED FOR CONSERVATION PURPOSES IN ORDER TO CLAIM THE INCOME TAX CREDIT FOR THE DONATION OF THAT PROPERTY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. -- The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

(1) Interest upon the obligations of states other than this State, political subdivisions of those states, and agencies of those states and their political subdivisions.

(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code.

(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the

taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.

(4) The amount by which the taxpayer's standard deduction has been increased for inflation under section 63(c)(4)(A) of the Code.

(4a) **(Effective for taxable years beginning on or after January 1, 1995)** The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the Code. This amount is reduced by two hundred fifty dollars ($250.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

(4a) **(Effective for taxable years beginning on or after January 1, 1996)** The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the Code. This amount is reduced by five hundred dollars ($500.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

(5) The ~~fair market value, up to a maximum of four hundred thousand dollars ($400,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12 and the~~ market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14.

(6) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property.

(7) The amount of federal estate tax that is attributable to an item of income in respect of a decedent and is deducted from gross income under section 691(c) of the Code."

Section 2. G.S. 105-151.12(c) is repealed.

Section 3. This act becomes effective for taxable years beginning on or after 1 January 1998.

DRAFT/FRD

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1491 PCS (Third Edition)

SHORT TITLE: Amend Conservation Easements Tax Credit

SPONSOR(S): Representatives Weatherly & Hackney

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Eliminate Addback		($200,000)	($200,000)	($200,000)	($200,000)
Increase Credit Amounts		($500,000 to $1,000,000 revenue loss each year)			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources; Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 1999.

BILL SUMMARY: Section 1 of the act amends the income tax credit for real property donated for conservation purposes to eliminate the requirement to add back to taxable income the fair market value of the donated property. Section 3 increases the maximum tax credit to $500,000 for corporate income tax and to $250,000 for individual income tax.

BACKGROUND: Under prior law, a taxpayer could receive a tax credit equal to 25% of the fair market value of a property interest donated to the State, a unit of local government, or a body organized to receive and administer lands for conservation purposes. The 1997 General Assembly increased the $25,000 cap on this credit to $100,000 for individual income taxes and $250,000 for corporate income taxes (S. L. 1997-226) beginning on or after January 1, 1997. The 1997 act also made a conforming change to ensure that a taxpayer who chooses to claim the State credit does not also claim and receive a deduction for federal income tax purposes. This is necessary since federal taxable income is the starting point for calculating State taxable income. The taxpayer must add back the fair market value of the donated property to federal taxable income the first year the tax credit is claimed.

ASSUMPTIONS AND METHODOLOGY:

ELIMINATE ADDBACK

The Tax Research Division of the Department of Revenue examined the 1997 tax returns of individuals claiming the conservation tax credit and the 1998 property donation certifications from the Department of Environment and Natural Resources. This data was used to calculate the tax benefit to the taxpayer with the addback and without the addback. Based on the 1997 and 1998 data, the Tax Research Division estimates an annual General Fund revenue loss of $200,000 each fiscal year.

INCREASE CREDIT MAXIMUMS

The proposed increase in the amount of credit to $250,000 for individuals and $500,000 for corporations will increase the revenue loss to the General Fund. The history of the conservation tax credit suggest a correlation between an increase in the maximum credit allowed and an increase in the number of donations and the amount of credits requested. Prior to 1989, the maximum tax credit was $5,000 per gift or donation. For tax years 1983 through 1988, 37 donations totaling 2,383 acres were made. The estimated value of this acreage was $5.6 million. In 1989, the maximum credit was increased to $25,000. For tax years 1989 through 1995, 95 donations totaling 23,714 acres were made. The estimated value of this acreage was $34.5 million. The cumulative credit for the period 1983 to 1988 was $574,151 and for the period 1989 to 1995 was $2,805,488. The cumulative credit for the 1989-1995 period is almost five times the 1983-1988 period amount. However, part of the growth in conservation credits during the 1989-1995 period might be attributed to economic growth and profit taking in the 1990s and to the growth in the land conservation movement.

The jury is still out on the extent the 1997 increase in the credit maximum has increased the amount of credits taken. The increase in the corporate maximum from $25,000 to $250,000 and in the individual maximum from $25,000 to $100,000 was expected to increase the General Fund revenue loss approximately $3.2 million a year. The Department of Revenue is still waiting on tax returns for the 1997 tax year due to the filing of tax extensions. However, Katherine Skinner of the Nature Conservancy North Carolina Chapter believes tax year 1998 will be a better indicator of the impact of increased credit amounts, because the 1997 legislation (HB 260) was not passed until June 30, 1997. With the late approval date, land conservation groups had little time to promote the new credit amounts in tax year 1997. Unfortunately, only 1 application for credit has been filed thus far in 1998 and most will not be filed until the spring of 1999.

It is difficult to project the impact of further increasing the credit amounts without the 1997 and 1998 data. Applying the proposed rates to projects from 1989 to 1995, the increased revenue loss ranged from $550,000 in 1989 to $47,250 in 1995. If the increased credit amounts were applied to the 1997 conservation credit applications (not actual tax returns), four corporations and one individual taxpayer would gain $685,000 in additional tax credits and the state would lose a like amount. Katherine Skinner of the Nature Conservancy North Carolina Chapter believes increased credit amounts will accelerate many land transactions and increase bargain sales of land to her non-profit. She has four projects underway, including the much publicized Jocassee Gorge land, that will use the increased credits in 1998 if HB 1491 is approved. Based on the unused credits

from past conservation projects, this note estimates the new maximum credit amounts will produce an annual revenue loss of $500,000 to $1 million each year.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic RB
APPROVED BY:
DATE: August 17, 1998

DRAFT/FRD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1491*
Committee Substitute Favorable 7/15/98
Proposed Committee Substitute H1491-PCS3176-RT003

Short Title: Amend Conservation Tax Credits. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT THAT AN INDIVIDUAL INCOME TAXPAYER ADD BACK TO TAXABLE INCOME THE FAIR MARKET VALUE OF REAL PROPERTY DONATED FOR CONSERVATION PURPOSES IN ORDER TO CLAIM THE INCOME TAX CREDIT FOR THE DONATION OF THAT PROPERTY AND TO INCREASE THE MAXIMUM TAX CREDIT THAT MAY BE CLAIMED BY A CORPORATION AND BY AN INDIVIDUAL FOR A DONATION OF REAL PROPERTY FOR CONSERVATION PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. -- The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

(1) Interest upon the obligations of states other than this State, political subdivisions of those states, and agencies of those states and their political subdivisions.

(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code.

(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax to the extent that the

taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.

(4) The amount by which the taxpayer's standard deduction has been increased for inflation under section 63(c)(4)(A) of the Code.

(4a) **(Effective for taxable years beginning on or after January 1, 1995)** The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the Code. This amount is reduced by two hundred fifty dollars ($250.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

(4a) **(Effective for taxable years beginning on or after January 1, 1996)** The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the Code. This amount is reduced by five hundred dollars ($500.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

(5) The ~~fair market value, up to a maximum of four hundred thousand dollars ($400,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12~~

~~and the~~ market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14.

(6) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property.

(7) The amount of federal estate tax that is attributable to an item of income in respect of a decedent and is deducted from gross income under section 691(c) of the Code."

Section 2. G.S. 105-151.12(c) is repealed.

Section 3. G.S. 105-130.34(a) reads as rewritten:

"(a) Any corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes is allowed a credit against the tax imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed ~~two hundred fifty thousand dollars ($250,000).~~ five hundred thousand dollars ($500,000). To support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection."

Section 4. G.S. 105-151.12(a) reads as rewritten:

"(a) A person who makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes is allowed a credit against the tax imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed ~~one hundred thousand dollars ($100,000).~~ two hundred fifty thousand dollars ($250,000). To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit

is claimed a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection."

Section 5. This act becomes effective for taxable years beginning on or after 1 January 1999.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1491 A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE REQUIREMENT THAT AN INDIVIDUAL INCOME TAXPAYER ADD BACK TO TAXABLE INCOME THE FAIR MARKET VALUE OF REAL PROPERTY DONATED FOR CONSERVATION PURPOSES IN ORDER TO CLAIM THE INCOME TAX CREDIT FOR THE DONATION OF THAT PROPERTY, 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 (# 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.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 4

SENATE BILL 1241
Finance Committee Substitute Adopted 6/4/98
Finance Committee Substitute #2 Adopted 7/23/98
Fourth Edition Engrossed 8/5/98

Short Title: Amendments to the Revenue Laws. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID, TO PROVIDE THAT RULE 11 OF THE RULES OF CIVIL PROCEDURE APPLIES TO TAX APPEALS BEFORE THE TAX REVIEW BOARD, TO EXTEND THE SUNSET ON THE QUALIFIED BUSINESS INVESTMENT TAX CREDIT, TO AMEND THE QUALIFIED BUSINESS INVESTMENT TAX CREDIT TO PROVIDE AN INCENTIVE FOR INVESTMENT IN SMALL FILM PRODUCTION BUSINESSES, AND TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO STUDY WHETHER A TAXPAYER WHO PREVAILS IN AN ADMINISTRATIVE APPEAL OR A LAWSUIT SHOULD RECEIVE REIMBURSEMENT OF EXPENSES IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 reads as rewritten:

"**§ 105-16. ~~Interest and penalty.~~ When tax must be paid.**

~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of the decedent. ~~shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate~~

~~established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown.~~"

Section 2. G.S. 105-22 reads as rewritten:

"**§105-22. Duties of clerks of superior court.**

~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an executor or administrator, at the time of the qualification of ~~such~~ the executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.~~"

Section 3. G.S. 105-29 reads as rewritten:

"**§ 105-29. Uniform valuation.**

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined

by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right of the estate to any refund due by reason of the determination."

Section 4. G.S. 105-109 reads as rewritten:

"**§ 105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.**

(a) When Tax Due. -- All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax~~

~~shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State. Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

Section 5. G.S. 105-110 is repealed.

Section 6. G.S. 105-112 is repealed.

Section 7. G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

Section 8. G.S. 105-113.87 reads as rewritten:

"§ 105-113.87. Refund for excise tax paid on sacramental wine.

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. -- An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an~~

~~application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

Section 9. G.S. 105-130.6 reads as rewritten:

"**§ 105-130.6. Subsidiary and affiliated corporations.**

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a report by ~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control be direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return and, in addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary~~

~~of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this ~~Division,~~ Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State; and if~~ State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

Section 10. G.S. 105-163.8 reads as rewritten:

"**§ 105-163.8. Liability of withholding ~~agents and others.~~ agents.**

~~(a) Withholding Agents.~~ — A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. — A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

Section 11. G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

Section 12. G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date,~~

~~twenty-five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

Section 13. G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

Section 14. G.S. 105-231 is recodified as G.S. 105-230(b).

Section 15. G.S. 105-230, as amended by this act, reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company so suspended of its suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~

~~(b) Penalty for exercising functions after suspension of articles or certificate.~~

~~A person who exercises or by any act attempts to exercise any powers, privileges, or franchises under articles of incorporation, articles of organization, or a certificate of authority after it has been suspended under G.S. 105-230 shall pay a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000), to be recovered in an action to be brought by the Secretary in the Superior Court of Wake County.~~ Any act performed or attempted to be performed during the period of suspension is invalid and of no effect."

Section 16. G.S. 105-236 reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the

check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the ~~check shall be imposed,~~ check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown that the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty,~~ filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the tax; provided, that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large income tax deficiency. -- In the case of income tax, if a taxpayer understates ~~gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, ~~the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, 'gross income' means gross income as defined in section 61 of the Code. ~~Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

c. ~~Large sales~~ Other large tax deficiency. -- In the case of a tax other than income tax, ~~sales and use taxes,~~ if a taxpayer understates ~~total~~ tax liability by twenty-five percent (25%) or ~~more as a result of one or more of the following reasons, the penalty assessed shall be~~ more, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~

~~2. Overstatement of exemptions or deductions.~~

~~3. Incorrect application of a lesser rate of tax.~~

d. No ~~double penalty.~~ double penalty. -- If a penalty is assessed under subdivision (6) of this section, no additional penalty

for negligence shall be assessed with respect to the same deficiency.

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures,

counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

~~a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty-five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".~~

~~b. For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

Section 17. G.S. 105-241.2(b1) reads as rewritten:

"(b1) Hearing. -- Within 60 days after a timely petition for administrative review has been filed and at least 10 days before the date set for the hearing, the Tax Review Board shall notify the taxpayer and the Secretary in writing of the time and place at which the hearing will be conducted. The hearing shall be held in Raleigh and the date set for the hearing shall be within 90 days after the timely petition for administrative review was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once at the request of the taxpayer and once at the request of the Secretary for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary. Officers and employees of the Revenue Department, when so requested by the Board, shall attend hearings on petitions for review and shall furnish the Board with all information they have respecting the asserted liability. ~~The~~ G.S. 1A-1, Rule 11, applies to hearings before the Tax Review Board. In other respects, the Tax Review Board may establish the procedure to be followed in hearings before it and may establish a schedule of costs of the proceedings. At least two members of the Board shall sit at the hearing and all members shall consider and decide the matters on review."

Section 18. G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

Section 19. G.S. 105-244 is repealed.

Section 20. G.S. 105-253 reads as rewritten:

"**§ 105-253. Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.**

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who

allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

(3) All taxes due from ~~the~~ a corporation or a limited liability company pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by ~~the corporation~~ it to a supplier for remittance to this State or another state.

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

Section 21. G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first~~

~~failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

Section 22. G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the application is due is barred."

Section 23. G.S. 105-449.109 is repealed.

Section 24. Section 7 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 7. Division V of Article 4 of Chapter 105 of the General Statutes is repealed effective for investments made on or after January 1, ~~1999.~~ 2003. Division V of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, ~~1999.~~ 2003."

Section 25. Section 10 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. Section 7 of this act becomes effective for investments made on or after January 1, ~~1999.~~ 2003. The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Division V of Article 4 of Chapter 105 of the General Statutes."

Section 26. G.S. 105-163.014 is amended by adding a new subsection to read:

"(d1) Certain Redemptions Allowed. -- Forfeiture of a credit does not occur under this section if a qualified business venture that engages primarily in motion picture film production makes a redemption with respect to securities received in an investment and the following conditions are met:

(1) The redemption occurred because the qualified business venture completed production of a film, sold the film, and was liquidated.

(2) Neither the qualified business venture nor a related person continues to engage in business with respect to the film produced by the qualified business venture."

Section 27. G.S. 105-163.014(d)(2) reads as rewritten:

"(2) ~~Within~~ Except as provided in subsection (d1) of this section, within five years after the investment was made, the qualified business venture or qualified grantee business in which the investment was made makes a redemption with respect to the securities received in the investment."

Section 28. G.S. 105-163.010 is amended by adding a new subdivision to read:

"(10a) Related person. -- A person described in one of the relationships set forth in section 267(b) or 707(b) of the Code."

Section 29. G.S. 105-163.010(14) reads as rewritten:

"(14) Subordinated debt. -- Indebtedness that ~~(i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii)~~ is not secured and is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. ~~Any~~ Except as provided in G.S. 105-163.014(d1), any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt."

Section 30. G.S. 105-163.013(b) reads as rewritten:

"(b) Qualified Business Ventures. -- In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified business venture. A business meets the requirements for registration as a qualified business venture if all of the following are true as of the date the business files the required application:

(1) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(1b) Either (i) it was organized after January 1 of the calendar year in which its application is filed or (ii) during its most recent fiscal year before filing the application, it had gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis.

(2) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.
(3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry.
(4) It does not engage as a substantial part of its business in any of the following:
a. Providing a professional service as defined in Chapter 55B of the General Statutes.
b. Construction or contracting.
c. Selling or leasing at retail.
d. The purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments.
e. Providing personal grooming or cosmetics services.
f. Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged.
(5) It was not formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.
(6) It is not a real estate-related business.

The effective date of registration for a qualified business venture whose application is accepted for registration is ~~the filing date of its application.~~ 60 days before the date its application was filed. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked. For the purpose of this Article, if a taxpayer's investment is placed initially in escrow conditioned upon other investors' commitment of additional funds, the date of the investment is the date escrowed funds are transferred to the qualified business venture free of the condition.

To remain qualified as a qualified business venture, the business must renew its registration annually as prescribed by rule by filing a financial statement for the most recent fiscal year showing gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis and an application for renewal in which the business certifies the facts required in the original application.

Failure of a qualified business venture to renew its registration by the applicable deadline shall result in revocation of its registration effective as of the next day after the renewal deadline, but shall not result in forfeiture of tax credits previously allowed to taxpayers who invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall send the qualified business venture notice of revocation within 60 days after the renewal deadline. A qualified business venture may apply to have its registration reinstated by the Secretary of State by filing an application for reinstatement, accompanied by the reinstatement application fee and a late filing penalty of one thousand dollars ($1,000), within 30 days after receipt of the

revocation notice from the Secretary of State. A business that seeks approval of a new application for registration after its registration has been revoked must also pay a penalty of one thousand dollars ($1,000). A registration that has been reinstated is treated as if it had not been revoked.

If the gross revenues of a qualified business venture exceed five million dollars ($5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this fact by filing a financial statement showing the revenues of the business for that year."

Section 31. The Revenue Laws Study Committee shall study whether a taxpayer should receive reimbursement of legal costs, including reasonable attorney fees, from the State when the taxpayer substantially prevails in an administrative appeal or a lawsuit with respect to the amount in controversy or with respect to the most significant issue or set of issues presented. The Committee may report its findings and recommendations on this issue to the 1999 Regular Session of the 1999 General Assembly.

Section 32. Sections 1 - 23 of this act become effective September 1, 1998. Sections 24 and 25 of this act are effective when this act becomes law. The remainder of this act is effective for taxable years beginning on or after January 1, 1998.

EXPLANATION OF SENATE BILL 1241 (4th Edition):
Amendments to the Revenue Laws

TO: House Finance Committee
FROM: Cindy Avrette & Martha H. Harris, Staff Attorneys
DATE: August 10, 1998
SPONSOR: Senator Hoyle

The fourth edition of Senate Bill 1241 incorporates three bills and a study:

- Senate Bill 1241, which amends several provisions in the penalty sections of the revenue laws at the request of the Department of Revenue and as recommended by the Revenue Laws Study Committee. These changes are contained in sections 1 through 16, and sections 18 through 23 of the bill. They become effective September 1, 1998.
- Senate Bill 1239, which extends the sunset for the qualified business investment tax credit an additional four years, until the year 2003. It retains the current $6 million cap on the credit. This change is contained in sections 24 and 25 of the bill. It becomes effective when the act becomes law.
- Senate Bill 981 (1995-96 General Assembly), which modifies the qualified business investment tax credit to make it more accessible for investors who provide capital for the film industry. This change is contained in sections 26 through 30 of the bill. It becomes effective for taxable years beginning on or after January 1, 1998. Senate Bill 981 passed the Senate in 1995.
- Section 17 provides that Rule 11 of the Rules of Civil Procedure is applicable to hearings before the Tax Review Board. Rule 11 is the general rule for when a party to a legal action may recover reimbursement for legal costs, including attorney fees. Section 31 of the bill directs the Revenue Laws Study Committee to study whether a different standard of review should be used for the reimbursement of legal costs by the State to a taxpayer.

Senate Bill 1241:

G.S. 105-237 gives the Secretary the authority to waive or reduce all penalties imposed under the tax laws, except the penalty for bad checks. In practice, the authority to waive or reduce penalties is delegated to approximately 55 individuals who are in the collection field offices and the audit department located in Raleigh. The Department of Revenue has a penalty policy that these employees must follow to ensure consistent treatment among taxpayers. The

Department of Revenue is currently revising its penalty guidelines. As part of the review process, the Department looked at all of the penalty provisions in Chapter 105. Based upon its review of the penalty provisions, the Department of Revenue requested the Revenue Laws Study Committee to recommend the changes contained in sections 1 - 23 of this bill. A chart is attached that details these sections of the bill. In summary, these sections:

- Conform the waiver provision in the inheritance tax statutes with the general rule of G.S. 105-237: the Secretary may waive penalties, but not interest.
- Repeal several penalties that are obsolete or ineffective.
- Provide that a refund of sales taxes, motor fuel taxes, and excise taxes on sacramental wine are barred if filed more than 3 years after their due date. The current law provides a reduction of the amount refunded for late applications.
- Clarify that additional taxes are assessable as penalties so that it is clear the taxes may be waived by the Secretary. It also clarifies that penalties are assessable as additional taxes to ensure the taxpayer receives the full administrative and judicial remedies applicable to tax assessments. This clarification conforms with the statutory definition of "tax" in G.S. 105-228.90: "[T]he term "tax" and "additional tax" include penalties and interest as well as the principal amount."
- Provide a uniform penalty for tax deficiencies that exceed 25% of the tax liability.
- Expand the statute concerning the personal liability of corporate officers who fail to remit certain taxes when due to include the manager and managing members of a LLC.

Senate Bill 1239:

The qualified business tax credit was enacted in August 1987 to promote economic development for North Carolina business developments. The initial credits applied to both corporations and individual taxpayers and there was a cap on the total amount of all tax credits of $12 million. In response to a United States Supreme Court decision in Fulton Corp. v. Faulkner in 1996, the General Assembly reduced the $12 million cap to $6 million, limited the credit to individuals and small pass-through entities, and removed the requirement that the qualified businesses be headquartered or operating in North Carolina. The credit will expire for investments made on or after January 1, 1999. Sections 24 and 25 of the bill extend the credit for four additional years – until January 1, 2003.

The credit is allowed for an individual taxpayer who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business. The credit is equal to 25% of the

amount invested and may not exceed $50,000 per individual in a single taxable year. An individual investor may also claim the allocable share of credits obtained by "pass-through entities" of which the investor is an owner. Pass-through entities include limited partnerships, general partnerships, S corporations, and limited liability companies. The credit may not be taken in the year the investment is made. Instead, the credit is taken in the year following the calendar year in which the investment was made, but only if the taxpayer filed an application with the Secretary of State. The unused credit may be carried forward for the next 5 years. The total amount of credits allowed to all taxpayers for investments made in a calendar year may not exceed $6 million. The Secretary of Revenue calculates the total amount of tax credits claimed from applications filed with the Secretary of State. If the amount exceeds the cap, then the Secretary allows a portion of the tax credits claimed by allocating the total of $6 million in tax credits in proportion to the size of the credit claimed by each taxpayer.

Under the 1996 Fulton case, the original credit provisions clearly violated the interstate commerce clause of the federal constitution because they reduced a taxpayer's tax liability by an amount equal to 25% of the cost of purchasing stock in a business whose purpose is to invest in businesses with headquarters and operations in North Carolina, while no tax reduction was allowed for purchasing similar stock in corporations whose purpose is to invest in businesses with headquarters and operations outside of North Carolina. In response to the Fulton case, the Revenue Laws Study Committee discussed this credit, along with several others, at great length. The original proposal of the Committee was to repeal ALL qualified business investment credits, effective 1-1-97. In response to appeals to the Committee and to the General Assembly, the credit was expanded to include investments in companies located both inside and outside North Carolina, but was limited to investments made by individuals and small pass-through entities under the theory that these investors are not likely to invest outside of a 50-mile radius of their home.

Senate Bill 981 (1995-96)

Sections 26 through 30 of the bill modify the qualified business investment tax credit in two ways:

(1) It allows a qualified business venture in the film industry to pay off its investors in less than 5 years without causing them to forfeit the tax credit.

(2) It provides that the effective date of registration for a qualified business venture whose application is accepted for registration is 60 days before the date its application was filed.

To be a qualified business venture eligible for the Qualified Business Investment Tax Credit, the business must be engaged primarily in manufacturing, processing, warehousing, wholesaling, or research and development, or that is a service-related industry and the business must be registered with the Secretary of State. The film industry is eligible to qualify for the credit, as a service-related industry.

To obtain a tax credit, a person must purchase the equity securities or subordinated debt directly from the qualified business. Subordinated debt is indebtedness that by its terms matures five or more years after its issuance, is not secured, and is subordinated to all other indebtedness. A taxpayer forfeits the credit if the qualified business redeems the securities purchased by the taxpayer within five years after the investment was made. In the film industry, a project in which a person may invest does not usually last five years, making it difficult to satisfy the five-year minimum for the investment. Sections 25 through 28 of the bill address this problem by allowing a business engaged primarily in the film production industry to redeem its securities within five years and to mature its subordinated debt within five years without causing an investor to forfeit the tax credit. The bill provides that this redemption is allowed only if the redemption occurred because the qualified business venture completed the production of a film, sold the film, and was liquidated.

Under current law, no tax credit is allowed for an investment made in a qualified business venture before the date of the business's registration with the Secretary of State. In the film industry, a person invests in a project before the project is started. The practice is that the investments are placed in an escrow account until a sufficient amount of capital is obtained to begin a film's production. If enough funds are not raised, then the money in escrow is returned to the investors. To accommodate this unique situation, Section 29 of the bill makes changes to the current law that extend the time in which a taxpayer may make an eligible investment. It provides that the effective date of a business's registration is 60 days before the date its application is filed, as opposed to the date it is filed. It also provides that if a taxpayer's investment is placed initially in escrow conditioned upon other investors commitment of additional funds, the date of the taxpayer's investment is the date escrowed funds are transferred to the qualified business venture free of the condition, as opposed to the date the investment was actually made.

Study Provision

Section 31 directs the Revenue Laws Committee to study whether or not a different standard of review should be used to determine when, and if, the State should reimburse a taxpayer for the taxpayer's legal costs incurred in an administrative appeal or lawsuit. Rule 11 of the Rules of Civil Procedure is the

general rule for when a party to a legal action may recover reimbursement for legal costs, including attorney fees. A party may be ordered to reimburse the other party its legal costs, including a reasonable attorney's fee, when the party's case is not well grounded in fact and law or is begun for an improper purpose, such as to harass the other party. This rule is used in court actions. Section 17 of the bill provides that it will also be applicable in hearings before the Tax Review Board. The Revenue Laws Study Committee will study whether a taxpayer should receive reimbursement of legal costs, including reasonable attorney fees, from the State when the taxpayer substantially prevails in an administrative appeal or a lawsuit with respect to the amount in controversy or with respect to the most significant issue or set of issues presented.

SENATE BILL 1241:
Explanation of Sections 1 - 23
Amendments to the Revenue Laws

Section	Explanation
1	Modernizes the statute that determines when inheritance taxes are due. It conforms the penalties for late payment with the general penalty provisions in G.S. 105-236: 5% failure to file penalty and a 10% failure to pay penalty. It also conforms the waiver provision in the inheritance tax statutes with the general rule of G.S. 105-237: the Secretary may waive penalties, but not interest.
2	Removes the $100 penalty that may be assessed against a superior court clerk who fails to file the required monthly reports of death. The penalty is enforceable by a court action. The Department does not enforce this penalty. If a clerk does not perform the necessary duties, the Department contacts the Administrative Office of the Courts.
3	This statute applies to a personal representative who fails to report federal changes in the value of an estate. This section removes the reference to 105-236 because there is not an appropriate penalty in that section. Besides, the estate is already subject to failure to file return and failure to pay tax when due penalties.
4	Modernizes and streamlines the privilege license statute by removing redundant provisions. Incorporates the provisions of G.S. 105-112 so that all of the provisions concerning the need to obtain a privilege license are in one statute. It also conforms the penalty provisions with G.S. 105-236. By conforming to the penalty provisions of G.S. 105-236, it removes the Class 1 misdemeanor criminal penalty for operating without a license.
5	Repeals a statute relating to the criminal provision that is deleted in Section 4 of the bill.
6	Removes the penalty for failing to display the privilege license in a conspicuous place. The remaining provisions have been incorporated into G.S. 105-109.

Section	Explanation
7	This statute addresses the failure to pay tobacco products tax when due. The statute conforms the penalty with Article 9. The current failure to pay tobacco products tax when due penalty is 50% of the amount of tax due. By conforming with Article 9, the penalty amount will be 10% of the amount of tax due.
8	Provides that a refund of the excise tax paid on sacramental wine is barred if filed more than 3 years after the due date. The current law provides a reduction of the amount refunded for late applications and that the refund is barred after 6 months.
9	This statute concerns the penalties that may be assessed against a corporation that fails to file a consolidated return when applicable. This section deletes a reference to a penalty provided "in this act" because one does not exist. It clarifies that Article 9 penalties, as well as dissolution under G.S. 105-230, are the appropriate remedies.
10	This section removes a provision that is moved to G.S. 105-253, contained in section 20 of the bill. The provision is moved so that all of the penalty provisions are contained in one statute.
11	Specifies that the additional tax is imposed as a penalty. The Secretary has the ability to waive penalties under G.S. 105-237.
12	Provides that a refund of sales tax paid is barred if filed more than 3 years after its due date.
13	Provides that Article 9 penalties will apply.
14	Recodifies G.S. 105-231 as G.S. 105-230(b).
15	This statute provides that a corporation or a LLC's article of incorporation or certificate of authority may be suspended if the taxpayer does not pay a tax due or file a report when due. The bill requires the Secretary of State to immediately notify a corporation or a LLC of a suspension under this statute. The bill repeals the penalty of $100 to $1,000 for acting under a suspended article of incorporation or certificate of authority. The Department does not bring actions in Superior Court of Wake County to enforce this penalty. The suspension or the articles or certificate is severe by itself.

Section	Explanation
16	This statute is the statute that contains most of the revenue law penalties. This section includes a statement that clarifies that penalties assessed by the Secretary are assessed as additional taxes. This language conforms with the definition of "tax" contained in G.S. 105-228.90: "[T]he term "tax" and "additional tax" include penalties and interest as well as the principal amount." In some statutes, the term "additional tax" is used instead of the term "penalty". This statement clarifies that the additional tax is a penalty, and as such may be waived by the Secretary under G.S. 105-237. Although this does not allow the taxpayer to deduct the penalty on the federal income tax return, it does ensure the taxpayer that the full administrative and judicial remedies applicable to tax assessments are applicable to assessments of tax penalties. This section also makes several substantive changes: • Provides a uniform penalty for all tax deficiencies that exceed 25% of the tax liability. The general 10% negligence penalty applies to all taxes. The large tax deficiency language specifies that it does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements. • It deletes the penalty for failing to file partnership and fiduciary informational returns for two reasons: the Department does not assess penalties against these fiduciaries and second, the Department does not generally assess a penalty that is less than $30 because it costs more to assess than it is worth. • It deletes the penalty for failing to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid because the penalty amount is an ineffective deterrent and the Revenue Laws Study Committee voted to repeal the penalty rather than increase it.
17	Provides that Rule 11 of the Rules of Civil Procedure apply to hearings before the Tax Review Board. Rule 11 is the general rule for when a party to a legal action may recover reimbursement for legal costs, including attorney fees. A party may be ordered to reimburse the other party its legal costs, including a reasonable attorney's fee, when the party's case is not well grounded in fact and law or is begun for an improper purpose, such as to harass the other party.

Section	Explanation
18	Deletes the $100 penalty that the Tax Review Board may impose for frivolous petitions because it is not used. The dismissal of the petition appears to be sufficient "punishment".
19	Repeals the statute that allows the Secretary of Revenue to ask the Attorney General's office to bring a court action for an injunction restraining a corporation or public utility from doing business until its return is filed and the tax is paid. The Department uses the grant of authority under G.S. 105-230 when necessary; it does not use the provisions of this statute.
20	Expands the statute concerning the personal liability of corporate officers who fail to remit certain taxes when due to include the manager and managing members of a LLC. The taxes addressed by this statute are sales and use taxes, motor fuel taxes, and income tax withholding taxes.
21	Provides that a motor carrier that fails to file a timely report is subject to a $50 penalty. This section deletes the words "up to" and the higher penalty for subsequent failures. This change reflects current Department practice since it imposes a flat penalty $50.
22	Provides that an application for a motor fuel tax refund is barred if submitted more than 3 years after it is due.
23	Repeals the statute concerning a reduction or denial of a late motor fuel tax refund application. The provision is incorporated into G.S. 105-449.108 in Section 21 of this bill.

EXPLANATION OF AMENDMENT TO SENATE BILL 1241:
Retirement Facility Tax Change

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 10, 1998
SPONSOR:

Amendment S1241-ALC-8/6 would temporarily revise an existing property tax exemption for retirement facilities that was recently held unconstitutional by the North Carolina Supreme Court[1]. The amendment would exempt nonprofit continuing care retirement communities (CCRCs) whose governing body is not self-perpetuating but is selected by another publicly supported 501(c)(3) nonprofit. It has been agreed to by the Association of County Commissioners, the Association for Nonprofit Homes for the Aging, and other interest groups representing nonprofit entities of various types. It would restore the exemption for those CCRCs that were exempt under the law struck down by the court, but retain taxability of those CCRCs that have been taxed all along. It does not affect charitable homes for the aging, which are exempt under current law and were not affected by the court case.

The exemption would remain in effect for two years, the 1998-99 and 1999-00 property tax years. During this period, the proposal directs the Legislative Research Commission to study the issue of property tax exemptions for nonprofit institutions in general and to report its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly.

Under current law, property owned by a nonprofit home for the aged, sick, or infirm is exempt from property tax if used for a charitable purpose.[2] A charitable purpose is defined as "one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward." The exemption proposed by this amendment is necessary because many continuing care retirement centers may not be charitable and therefore would not qualify for the property tax exemption. In the 1980s, two cases held that certain continuing care retirement centers were not charitable for purposes of property tax exemption.[3] In concluding

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[1] In re Springmoor, (N.C.S.Ct., No. 79PA97, April 3, 1998)

[2] G.S. 105-278.6. In addition, retirement centers that are funded by North Carolina Medical Commission bonds are also exempt from property taxes under G.S. 131A-21 as long as the bonds are outstanding. See In re Appeal of Glenaire, (N.C. Ct. App. 2/7/95 unpublished), rev. denied 360 N.C. 261(1995).

[3] In re Chapel Hill Residential Retirement Center, 60 N.C. App. 294, rev. denied, 308 N.C. 386 (1983); In re Appeal of Barham, 70 N.C. App., rev. denied, 312 N.C. 622 (1984).

that the institutions were not charitable in these cases, the court noted the following facts about one or both institutions:

1. The institution refused to admit applicants with health problems rendering them physically unable to care for themselves.
2. Substantial entrance fees and monthly fees were required from all residents, and applicants had to demonstrate that they were financially capable of supporting themselves for the period of their life expectancy.
3. The operation of the institution was funded entirely or mainly from fees paid by residents, not by donations or endowments.
4. The costs were so high that only a small percentage of the elderly could afford the home.[4]
5. The home retained the right to terminate a resident for nonpayment of fees unless nonpayment was beyond the resident's control.

In each case, the court concluded that merely supplying care and attention to elderly persons cannot, alone, constitute charity. The court found that these retirement communities were not providing for the special needs of individuals who are in need of charity, the aid of whom benefits society as a whole in addition to the residents. The court in one case also noted that allowing such a retirement home to qualify because its residents were elderly would give those residents preferential treatment over the elderly who live in their own homes and must pay property taxes.[5]

Under this amendment, an institution that failed to qualify as charitable would receive a property tax exemption for its property if it meets all of the following conditions:

1. It owns the property and uses it for a retirement community that includes a skilled nursing facility or an adult care facility and also includes independent living units. (In other words, as under current law, the exemption applies to continuing care retirement communities, but not stand-alone nursing homes or rest homes.)
2. The institution must be nonprofit and exempt from income tax, and its assets upon dissolution must revert to a 501(c)(3) charitable organization.
3. The institution must have an active fund-raising program to assist it in providing services to those who do not have the financial resources to pay the fees.

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[4] According to another case, Southminster, Inc. v. Justus, 119 N.C. App. 669 (1995), the average annual income in 1988 of residents of the Pines was $43,000 and their average net worth was $444,000. At Southminster, 88% of residents had net worths over $200,000 and 63% had net worths over $350,000.

[5] Low-income, elderly homeowners qualify for partial exemption under the homestead exemption. G.S. 105-277.1.

4. The governing body of the institution must be selected by a charitable nonprofit that is exempt under section 501(c)(3) of the Internal Revenue Code and is a publicly supported charity. (A publicly supported charity is a charity that is not a private foundation under section 509 of the Code). Limiting the selecting nonprofit to a publicly supported charity closes a loophole under which a self-perpetuating nonprofit could create a "dummy" 501(c)(3) private foundation that is self-perpetuating and would "select" its own board as the governing body of the retirement facility.

From its enactment in 1987 until it was struck down by the North Carolina Supreme Court as unconstitutional in 1998, G.S. 105-275(32) provided a property tax exemption for continuing care retirement centers that were owned and operated by religious or Masonic organizations. The court found that the exemption was an establishment of religion in violation of the First Amendment of the United States Constitution. The effect of the case is that the property of continuing care retirement centers previously exempt under that statute would be taxable beginning with the 1998-99 property tax year, unless they qualify for exemption as charitable homes under G.S. 105-278.6.[6] There would be no taxation for earlier years, however.

[6] The Springmoor case does not affect the sales tax refunds to which continuing care retirement centers are entitled under G.S. 105-164.14. Under the Southminster case, cited above, these homes are considered charitable for purposes of sales tax refunds even if they do not qualify as charitable for property tax purposes.

FISCAL ANALYSIS MEMORANDUM

DATE: August 10, 1998

TO: Representative Dickson

FROM: Linda Struyk Millsaps LSM
Fiscal Research Division

RE: Retirement Facility Tax Change

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	Millions				
	FY 1998-99	**FY 1999-00**	**FY 2000-01**	**FY 2001-02**	**FY 2002-03**
REVENUES					
		No General Fund Impact			
Local Government	**(5.1)**	**(5.1)**	**0**	**0**	**0**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County governments and localities that collect property taxes.

EFFECTIVE DATE: The tax portion of the act becomes effective for the FY 1998-9 tax year, and sunsets at the close of the 1999-2000 tax year.

BILL SUMMARY: The bill removes qualified non-profit retirement facilities from the property tax base for a period of two tax years. The bill removes a retirement facility from the property tax base, for that time period, if it meets the following requirements:

1. its grounds and buildings are at a single site, and
2. it is designed for elderly residents, and
3. it has independent living facilities, and
4. it has either:
   A) skilled nursing facilities or
   B) adult care facilities, and
5. it is exempt from corporate income tax, and
6. it's net revenues are applied to providing uncompensated goods and services to the elderly and the local community, and
7. it is a 501(c)3 organization, and
8. it has an active fundraising program that subsidies those in financial need, and
9. a majority of its board of directors or trustees is selected by a publicly supported 501(c)3 organization that is
   A) organized for charitable purposes, and
   B) is not a private foundation.

This type of organization is generally referred to as a publicly supported 501(c)3.

The alteration in the property tax base only applied to FY 1998-9 and FY 1999-2000.

The bill also instructs the Legislative Research Commission to conduct a comprehensive study of property tax exemptions for nonprofit institutions. The bill also instructs the Commission to make a final report on this subject to the 2000 Regular Session of the legislature. An interim report may be given to the 1999 Regular Session.

AMENDMENT HISTORY: From a tax perspective, before April 1998, there were four categories of retirement communities in North Carolina. The first category of facilities was "charitable". These facilities were exempt from property tax because they were used exclusively for charitable purposes and were organized as not for profit groups. A second category of homes was those exempt from property tax under G.S. 131A-21. Under this statute, homes financed by medical commission bonds are exempt from tax for the life of the bond. A third category of homes were non-profit homes affiliated with religious or Masonic organizations. They were categorized as "non-charitable religious." All "non-charitable religious" homes were exempt from property tax. A fourth group of homes was the "non-charitable, non-religious." These "non-charitable, non-religious" facilities can be either for-profit or not-for-profit. Both types of "non-charitable, non-religious" facilities were subject to local property tax.

On April 8, 1998, the North Carolina Supreme Court struck down the property tax exemption for the non-charitable religious organizations in The Appeal of Springmoor, Inc. and Ammons, Inc.. The court determined that the plaintiff (Springmoor) was virtually identical to the non-charitable religious organizations receiving the exemption, with one exception: the organizations receiving the exemption were religious. The court found this to be a violation of the First Amendment's prohibition against establishing religion. As such, the court determined that all non-charitable homes for the aging, regardless of religious affiliation, should be subject to property tax. The court ruling had no impact on the charitable homes or those exempt because of medical commission bonds, and they are still exempt from property tax.

ASSUMPTIONS AND METHODOLOGY: After the Supreme Court decision the Department of Revenue, Property Tax Division, conducted a statewide survey of county tax official to determine the impact of the court's decision. They also asked county tax officials to report all properties that may apply for or request an exemption under a possible amendment that would render all such properties exempt, and the potential lost revenue. Ninety-two of the state's one-hundred counties responded to the survey.

Once specific proposals were available, fiscal research staff and the North Carolina Association for Non-Profit Homes for the Aging (NCANPHA) surveyed both county assessors and association members about the potential impact of legislation. The survey results below represent the property tax that would have been paid by qualified retirement facilities in FY 1998-9. These consensus estimates were approved by the County Commissioner's Association, NCANPHA, and fiscal research staff. These estimates under-estimate municipal losses, as not all county assessors reported the potential municipal impact. Several assessors and facility directors indicate that these figures are estimates, as not all counties have a current assessment of the properties. All the facilities in the chart meet the nine point criteria listed above.

Non-Charitable Religious Retirement Facilities

(Estimated Local Loss Associated with the Bill)

Counties	Estimated County Loss	Facilities
Buncombe		
	$ 354,408	The Givens Estates UMRC
	$ 1,105,000	Deerfield Eps. Ret. Comm. Inc.
	$ 78,000	Cresentview (part of Luther Ridge)
	$ 33,200	Pisgah Manor Health Care Center
	$ 75,000	WNC Baptist Retirement Home
Catawba		
	$ 148,341	Abernathy Center
Davidson		
	$ 43,029	Piedmont Center
Forsyth		
	$ 175,000	Brookridge Retirment Community
	$ 215,000	Triade United Methodist
	$ 20,000	Salemtowne
Gaston		
	$ 60,749	Covenant Village
Guilford	$ 598,810	
		Friends Home West & Guilford
		Maryfield Nursing Home
		Masonic Home and Eastern Star
		Presbyterian Home of High Point
	$ 290,000	Well-Spring
Mecklenburg		
	$ 168,122	Davidson Retirement Community
	$ 52,697	Carmel Hills
	$ 576,524	Methodist Home
	$ 272,664	Sharon Towers Presbyterian Home
	$ 330,437	Southminster
New Hanover		
	$ 86,500	Plantation Village
Pitt		
	$ 160,000	Cypress Glen
Rowan		
	$ 40,035	Trinity Oaks
Scotland		
	$ 210,173	Scotia Village
TOTAL	**$ 5,093,689**	

The facilities listed in the chart are those "non-charitable religious" facilities that were exempt from tax before the Springmoor decision. Under current law, these facilities are now taxable. Attorneys associated with North Carolina Association of Non-Profit Homes for the Aging (NCANPHA) believe that the "non-charitable religious" non-profits that were previously exempt from property tax have boards selected by a publicly supported 501(c)3 organization. As such, they meet requirement nine (9) in the bill summary. NCANPHA believes that the "non-religious, non-charitable" non-profit facilities cannot meet this requirement. (NCANPHA represents both the religious and non-religious retirement communities.) If this is the case, the bill will exempt only those facilities that were exempt before the Springmoor decision. Legislative staff attorneys also believe the bill will impact only those facilities that were previously exempt. Exempting these facilities from the property tax base will create a $5.1 million loss in revenue to counties, municipalities, and fire districts.

Several of the counties listed, especially the smaller counties, included the indicated revenue amount in there estimated revenue base for FY 1998-9. As such, many counties assumed that these revenues would be available for programming, and including the revenues in their county budgets. Many of the larger counties have yet to release tax bills for these facilities in anticipation of a potential change by the General Assembly.

NORTH CAROLINA ASSOCIATION OF NON-PROFIT HOMES FOR THE AGING, INC.
3700 National Drive, Suite 218
Raleigh, North Carolina 27612

PHONE: (919) 571-8333
FAX (919) 571-1297

Non-Profit Retirement Community Property Tax Exemption

Senate Bill 1241—Amendment S1241-ALC-8/6

This amendment temporarily revises the property tax exemption for qualified non-profit retirement communities. The exemption would apply to non-profit continuing care retirement communities (CCRCs) whose governing board is selected by another publicly supported 501(c)(3) organization. Facilities with self-perpetuating boards would not qualify for the exemption, nor would facilities with governing boards selected by private foundations. The amendment sunsets this temporary exemption on July 1, 2000 and directs the Legislative Research Commission to conduct a comprehensive study of non-profit property tax exemptions with final recommendations to be made to the 2000 Session of the General Assembly.

Why do we need this amendment? On April 3rd of this year, the NC Supreme Court filed an opinion ruling unconstitutional the property tax exemption for religious and Masonic homes for the aging. Finding that the statute violated the establishment of religion clause of the First Amendment, and finding no severability in the statute, the Court struck down the entire statute but stated in the majority opinion that "in its wisdom" the General Assembly may enact an exemption for the entire class of non-profit retirement communities. The result of this opinion was to eliminate the property tax exemption just two months before the beginning of the 1998 tax year, at a time when most facilities were in the midst of a fiscal year with no budget for a large tax bill. The effect of the amendment is to place a moratorium on the tax, providing an exemption for those facilities exempt under the previous statute, while the broad public policy issue is studied and resolved.

What is the fiscal impact of this amendment? This amendment is truly revenue neutral. By applying the exemption to facilities with governing boards selected by another publicly supported 501(c)(3) organization, it is effectively limited to only those facilities that were previously exempt. There is no new revenue loss to the counties and no windfall to the retirement communities because no additional facilities become exempt.

Who supports/opposes this amendment? This amendment reflects a compromise between the North Carolina Association of Non-Profit Homes for the Aging (NCANPHA) and the NC Association of County Commissioners (NCACC). Eight of the nine NCANPHA members that will continue to pay their property tax during the two-year study period have agreed to this option. Other than one NCANPHA member, we know of no public opposition to this amendment.

NCANPHA Contact: Stacy Flannery, Public Policy Director

NC Association of Non-Profit Homes for the Aging
Facilities At Risk

Community Name	Property Tax Liability (estimated city & county)	County
Twin Lakes Center	$52,097.00	Alamance
Crescent View	$78,000.00	Buncombe
Deerfield Episcopal Retirement Community	$1,105,000.00	Buncombe
Givens Estates, Inc.	$354,408.00	Buncombe
Western NC Baptist Home	$75,000.00	Buncombe
Brooks-Howell Home	no report	Buncombe
Sailor's Snug Harbor	$40,000.00	Carteret
Abernethy Center	$148,341.00	Catawba
Piedmont Center	$43,029.00	Davidson
Forest at Duke	$479,850.00	Durham
Joseph F. Coble Health Care Center	$21,019.00	Durham
Methodist Retirement Community	$68,815.00	Durham
Brookridge Retirement Community	$175,000.00	Forsyth
Salemtowne	$20,000.00	Forsyth
Triad United Methodist Home	$215,000.00	Forsyth
Covenant Village, Inc.	$60,749.00	Gaston
Friends Homes West & Guilford	$80,473.00	Guilford
Maryfield Nursing Home	$48,455.00	Guilford
Masonic and Eastern Star Home of NC	$54,638.00	Guilford
Presbyterian Home of High Point	$59,352.00	Guilford
Well-Spring	$290,000.00	Guilford
Sharon Towers/Asbury/Epworth	$272,664.00	Mecklenburg
Carmel Hills	$52,697.00	Mecklenburg
Pines at Davidson	$168,122.00	Mecklenburg
Southminster	$330,437.00	Mecklenburg
Penick Village	no report	Moore
St. Joseph of the Pines	$400,000.00	Moore
Cypress Glen Retirement Community	$160,000.00	Pitt
Cross Road Retirement Community	$37,200.00	Randolph
Wesley Pines	$30,362.00	Robeson
Lutheran Nursing Homes, Inc.--Salisbury	no report	Rowan
Trinity Oaks	$40,035.00	Rowan
Scotia Village	$210,173.00	Scotland
Glenaire	$101,757.00	Wake

*Shading indicates probable exemption under Medical Care Commission bonds

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1241 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Cunningham
Sen.)

moves to amend the bill on page 17, line 16

( ) WHICH CHANGES THE TITLE

by ~~changing~~ deleting "September 1," and substituting ~~"December 1,"~~ "January 1, 1999"

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1241

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1241-ARB-8/18 Page 1 of __

Date_____,1998

Comm. Sub. [YES]
Amends Title []
Fourth Edition

Representative_____

moves to amend page 2, line 28, of Amendment Number 1 offered by Rep. Dickson, S1241-ALC-8/6, by rewriting that line to read:

"(4) Its charter or bylaws, as it exist on September 1, 1998, provide that it is governed by a".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _X_ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1241

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1241-ALC-8/6 Page 1 of __

Date_____, 199__

Comm. Sub. [YES]
Amends Title [YES]
Fourth Edition

Rep. Dickson

moves to amend the bill on page 1, line 10,
by deleting the word "AND";

and on page 1, line 14,
by adding the following immediately before the period:
", TO TEMPORARILY REINSTATE A PROPERTY TAX EXEMPTION FOR CERTAIN NONPROFIT RETIREMENT FACILITIES, AND TO DIRECT THE LEGISLATIVE RESEARCH COMMISSION TO STUDY PROPERTY TAX EXEMPTIONS FOR NONPROFIT ENTITIES";

and on page 17, lines 16 - 19,
by rewriting the lines to read:
"Section 32. G.S. 105-275(32) is recodified as G.S. 105-278.6A and reads as rewritten:
'**§ 105-278.6A. Qualified retirement facility.**
(a) Classification. -- Real and personal property owned by a ~~home for the aged, sick, or infirm, that is exempt from tax under Article 4 of this Chapter,~~ qualified retirement facility and used in the operation of that ~~home.~~ facility is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and shall not be listed, assessed, or taxed.
(b) Facility Defined. -- As used in this section, the term 'retirement facility' means a ~~The term "home for the aged, sick, or infirm" means a self-contained~~ community that meets all of the following conditions:
(1) Its grounds and buildings are at a single site.
(2) It ~~(i)~~ is designed for elderly ~~residents; (ii)~~ residents.
(3) It includes independent living units for elderly residents.
(4) ~~operates~~ It includes a skilled nursing ~~facility, an intermediate care facility, or a home for the aged; (iii)~~ facility or an adult care facility.
~~includes residential dwelling units, recreational facilities, and service facilities; (iv) the charter of which~~

(c) Qualification. -- A retirement facility qualifies for the benefits of this section if it meets all of the following conditions:

(1) It is exempt from tax under Article 4 of this Chapter and private shareholders do not benefit from its operations.

(2) All of its revenues, less operating and capital expenses, are applied to providing uncompensated goods and services to the elderly and to the local community, or are applied to an endowment or a reserve for these purposes.

(3) Its charter provides that in the event of dissolution, its assets will revert or be conveyed to an entity that is organized exclusively for charitable, educational, scientific, or religious purposes, and ~~which qualifies as~~ is an exempt organization under ~~Section 501(c)(3) of the Internal Revenue Code of 1986;~~ section 501(c)(3) of the Code.

~~(v) is owned, operated, and managed by one of the following entities:~~

~~a. A congregation, parish, mission, synagogue, temple, or similar local unit of a church or religious body;~~

~~b. A conference, association, division, presbytery, diocese, district, synod, or similar unit of a church or religious body;~~

~~c. A Masonic organization whose property is excluded from taxation pursuant to G.S. 105-275(18); or~~

~~d. A nonprofit corporation~~

(4) Its charter or bylaws provide that it is governed by a board of directors or trustees at least a majority of whose members ~~elected for terms commencing on or before December 31, 1987, shall have been elected or confirmed by, and all of whose members elected for terms commencing after December 31, 1987, shall be~~ are selected ~~by,~~ by one or more ~~entities described in A., B., or C. of this subdivision, or organized for a religious purpose as defined in G.S. 105-278.3(d)(1); and~~ nonprofit corporations that meet all of the following conditions:

a. It is exempt under section 501(c)(3) of the Code.

b. It is organized for a charitable purpose as defined in G.S. 105-278.6.

c. It is not a private foundation as defined in section 509 of the Code.

(5) ~~(vi)~~ It has an active program to generate funds through one or more sources, such as gifts, grants, trusts, bequests, endowment, or an annual giving program, to assist the ~~home~~ retirement facility in

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1241

AMENDMENT NO._____
(to be filled in by Principal Clerk)

S1241-ALC-8/6 Page 3 of __

serving persons who might not be able to reside ~~at the home~~ there without financial assistance or subsidy.'

Section 33. G.S. 105-164.14(b)(4) reads as rewritten:

'(4) ~~Homes for the aged, sick, or infirm~~ Qualified retirement facilities whose property is excluded from property tax under G.S. ~~105-275(32).~~ 105-278.6A.'

Section 34. G.S. 105-273 is amended by adding a new subdivision to read:

'(4a) Code. -- Defined in G.S. 105-228.90.'

Section 35. The Legislative Research Commission shall conduct a comprehensive study of property tax exemptions for nonprofit institutions, including the history and evolution of such exemptions in North Carolina, the policy reasons for property tax exemptions, the effect of the exemptions on local governments and on other taxpayers, the extent to which other states provide property tax exemptions for nonprofit institutions, and any other issues it considers relevant. The Legislative Research Commission may make an interim report of its findings and recommendations on this issue to the 1999 Regular Session of the 1999 General Assembly and shall make a final report of its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly. The temporary property tax exemption provided in Section 32 of this act shall not be considered a precedent or guideline for the purpose of the Legislative Research Commission's study or recommendations.

Section 36. (a) Sections 1 - 23 of this act become effective September 1, 1998.

(b) Sections 26 through 30 of this act are effective for taxable years beginning on or after January 1, 1998.

(c) Section 32 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1998. Notwithstanding the provisions of G.S. 105-282.1(a), an application for the benefit provided in Section 32 of this act for the 1998-99 tax year is timely if it is filed on or before October 1, 1998. Section 32 of this act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2000.

(d) Sections 24, 25, 30, and 33 through 36 of this act are effective when this act becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 4th

H. B. No. _____ DATE _____

S. B. No. 1241 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Nesbit
)
Sen.)

moves to amend the bill on page 12, line 11-28

( ) WHICH CHANGES THE TITLE

by deleting those lines and by renumbering the remaining sections accordingly;

and on page 17, line 16.

~~and~~ by deleting the phrase "Section 32. Sections 1-23" and substituting the phrase "Section 31. Sections 1-22";

and on page 17, line 17

by deleting the phrase "Sections 24 and 25" and substituting the phrase "Sections 23 and 24";

and on page 1, lines 5-7

by deleting the phrase

"TO PROVIDE THAT RULE 11 OF THE RULES OF CIVIL PROCEDURE APPLIES TO TAX APPEALS BEFORE THE TAX REVIEW BOARD,".

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1241 (Fourth Edition)

SHORT TITLE: Amendments to the Revenue Laws

SPONSOR(S): Senator Hoyle, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Penalties		No estimate available			
Qualified Business Tax Credit			**($6 mil.)**	**($6 mil.)**	**($6 mil.)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Department of the Secretary of State

EFFECTIVE DATE: Sections 1 through 23 (penalties) become effective September 1, 1998. Sections 24 and 25 (qualified business tax credit) are effective when the act becomes law. The remainder of this act is effective for taxable years beginning on or after January 1, 1998.

BILL SUMMARY: The bill gives uniformity and simplicity to a number of penalties imposed by the Department of Revenue. The bill extends the sunset on the qualified business tax credit from January 1, 1999 to January 1, 2003 and provides an incentive for investment in small film production businesses. The bill directs the Revenue Laws Study Committee to study whether a taxpayer's legal costs and attorney fees should be reimbursed by the state when the taxpayer prevails in an administrative appeal or lawsuit.

ASSUMPTIONS AND METHODOLOGY:

PENALTIES

This bill uses GS 105 - 236 as the standard for penalties charged by the Department of Revenue. A number of technical or clarifying changes are made in the bill to bring uniformity to a list of penalties imposed by the Department. Some penalties are deleted because they are not used by the Department of Revenue, such as the penalty on the clerks of Superior Court in Section 2 and the penalty for frivolous petitions in section 18. However, in the attempt for uniformity, some sections of the bill may create a small revenue impact (less than $100,000). Section 7 lowers the

penalty on the tobacco products tax and thus should produce a decrease in revenue. Sections 4 and 9 have higher penalties than the previous statute and may create a revenue gain. **Unfortunately, no estimate can be made because the Department does not collect data on these penalties.**

QUALIFIED BUSINESS TAX CREDIT

The current tax credit for qualified business ventures expires for investments made on or after January 1, 1999. Investments made in 1998, the last year of the credit, will be taken in tax year 1999. The last General Fund impact for this credit will be in FY 99-00 when individual income tax returns are filed in the spring of 2000. (carry forwards will extend some of the credits into future years). Budget availability estimates for future years assume the credit will sunset in 1999. **Extension of the sunset in 1999, effective for tax year 2000, will produce an annual General Fund revenue loss of $6 million for fiscal years 2000-01 through FY 2003-04.**

The qualified business tax credits given since 1993 are as follows:

1993	$4,711,913
1994	$6,011,513
1995	$3,523,894
1996	$4,677,221
1997	$6,000,000 *
1998	$5,082,000 **

* The Department of Revenue received requests for $9,264,679 in credits, but the General Assembly limited the credit amount to $6 million in 1997.
** This amount represents the applications processed as of July 7, 1998. (approximately $200,000 more in credits pending)

The changes made in the qualified business investment tax credit for film productions are advantageous to this industry, but do not increase the General Fund revenue impact of the bill. The program is capped at $6 million each year. If the amount of applications for credit exceed $6 million, as in 1997, then the credit amount given each applicant is prorated.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: August 8, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1241
Finance Committee Substitute Adopted 6/4/98
Finance Committee Substitute #2 Adopted 7/23/98
Fourth Edition Engrossed 8/5/98
Proposed House Finance Committee Substitute S1241-PCS3653-RB

Short Title: Amendments to the Revenue Laws. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID, TO EXTEND THE SUNSET ON THE QUALIFIED BUSINESS INVESTMENT TAX CREDIT, TO AMEND THE QUALIFIED BUSINESS INVESTMENT TAX CREDIT TO PROVIDE AN INCENTIVE FOR INVESTMENT IN SMALL FILM PRODUCTION BUSINESSES, TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO STUDY WHETHER A TAXPAYER WHO PREVAILS IN AN ADMINISTRATIVE APPEAL OR A LAWSUIT SHOULD RECEIVE REIMBURSEMENT OF EXPENSES IN CERTAIN CIRCUMSTANCES, TO TEMPORARILY REINSTATE A PROPERTY TAX EXEMPTION FOR CERTAIN NONPROFIT RETIREMENT FACILITIES, AND TO DIRECT THE LEGISLATIVE RESEARCH COMMISSION TO STUDY PROPERTY TAX EXEMPTIONS FOR NONPROFIT ENTITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 reads as rewritten:

"**§ 105-16. ~~Interest and penalty.~~ When tax must be paid.**

~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of the decedent. ~~shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown.~~"

Section 2. G.S. 105-22 reads as rewritten:

"**§ 105-22. Duties of clerks of superior court.**

~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an executor or administrator, at the time of the qualification of ~~such~~ the executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.~~"

Section 3. G.S. 105-29 reads as rewritten:

"**§ 105-29. Uniform valuation.**

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right of the estate to any refund due by reason of the determination."

Section 4. G.S. 105-109 reads as rewritten:

"**§ 105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.**

(a) When Tax Due. -- All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which~~

~~was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State: Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

Section 5. G.S. 105-110 is repealed.

Section 6. G.S. 105-112 is repealed.

Section 7. G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

Section 8. G.S. 105-113.87 reads as rewritten:

"**§ 105-113.87. Refund for excise tax paid on sacramental wine.**

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and

records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. — An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

Section 9. G.S. 105-130.6 reads as rewritten:

"**§ 105-130.6. Subsidiary and affiliated corporations.**

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a report by ~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control be direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return and, in~~

~~addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this ~~Division,~~ Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State; and if~~ State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

Section 10. G.S. 105-163.8 reads as rewritten:

"**§ 105-163.8. Liability of withholding ~~agents and others.~~ agents.**

~~(a) Withholding Agents. —~~ A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. — A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

Section 11. G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate

established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

Section 12. G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

Section 13. G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

Section 14. G.S. 105-231 is recodified as G.S. 105-230(b).

Section 15. G.S. 105-230, as amended by this act, reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company so suspended of its suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~

~~(b) Penalty for exercising functions after suspension of articles or certificate.~~

~~A person who exercises or by any act attempts to exercise any powers, privileges, or franchises under articles of incorporation, articles of organization, or a certificate of authority after it has been suspended under G.S. 105-230 shall pay a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000), to be recovered in an action to be brought by the Secretary in the Superior Court of Wake County.~~ Any act performed or attempted to be performed during the period of suspension is invalid and of no effect."

Section 16. G.S. 105-236 reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the ~~check shall be imposed,~~ check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown that the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty,~~

filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the tax; provided, that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large income tax deficiency. -- In the case of income tax, if a taxpayer understates ~~gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, ~~the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, 'gross income' means gross income as defined in section 61 of the Code. ~~Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

c. ~~Large sales~~ Other large tax deficiency. -- In the case of a tax other than income tax, ~~sales and use taxes,~~ if a taxpayer understates ~~total~~ tax liability by twenty-five percent (25%) or ~~more as a result of one or more of the following reasons, the penalty assessed shall be~~ more, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~
~~2. Overstatement of exemptions or deductions.~~
~~3. Incorrect application of a lesser rate of tax.~~

d. No ~~double penalty.~~ double penalty. -- If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency.

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be

guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

~~a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty-five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".~~

b. ~~For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be

disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

Section 17. G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

Section 18. G.S. 105-244 is repealed.

Section 19. G.S. 105-253 reads as rewritten:

"**§ 105-253. Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.**

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible~~

~~officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

(3) All taxes due from ~~the~~ a corporation or a limited liability company pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by ~~the corporation~~ it to a supplier for remittance to this State or another state.

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

Section 20. G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

Section 21. G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the application is due is barred."

Section 22. G.S. 105-449.109 is repealed.

Section 23. Section 7 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 7. Division V of Article 4 of Chapter 105 of the General Statutes is repealed effective for investments made on or after January 1, ~~1999.~~ 2003. Division V of

Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, ~~1999.~~ 2003."

Section 24. Section 10 of Chapter 443 of the 1993 Session Laws reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. Section 7 of this act becomes effective for investments made on or after January 1, ~~1999.~~ 2003. The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Division V of Article 4 of Chapter 105 of the General Statutes."

Section 25. G.S. 105-163.014 is amended by adding a new subsection to read:

"(d1) Certain Redemptions Allowed. -- Forfeiture of a credit does not occur under this section if a qualified business venture that engages primarily in motion picture film production makes a redemption with respect to securities received in an investment and the following conditions are met:

(1) The redemption occurred because the qualified business venture completed production of a film, sold the film, and was liquidated.

(2) Neither the qualified business venture nor a related person continues to engage in business with respect to the film produced by the qualified business venture."

Section 26. G.S. 105-163.014(d)(2) reads as rewritten:

"(2) ~~Within~~ Except as provided in subsection (d1) of this section, within five years after the investment was made, the qualified business venture or qualified grantee business in which the investment was made makes a redemption with respect to the securities received in the investment."

Section 27. G.S. 105-163.010 is amended by adding a new subdivision to read:

"(10a) Related person. -- A person described in one of the relationships set forth in section 267(b) or 707(b) of the Code."

Section 28. G.S. 105-163.010(14) reads as rewritten:

"(14) Subordinated debt. -- Indebtedness that ~~(i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii)~~ is not secured and is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. ~~Any~~ Except as provided in G.S. 105-163.014(d1), any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt."

Section 29. G.S. 105-163.013(b) reads as rewritten:

"(b) Qualified Business Ventures. -- In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified business venture. A business meets the requirements for registration as a qualified business venture if all of the following are true as of the date the business files the required application:

(1) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(1b) Either (i) it was organized after January 1 of the calendar year in which its application is filed or (ii) during its most recent fiscal year before filing the application, it had gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis.

(2) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

(3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry.

(4) It does not engage as a substantial part of its business in any of the following:

a. Providing a professional service as defined in Chapter 55B of the General Statutes.

b. Construction or contracting.

c. Selling or leasing at retail.

d. The purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments.
e. Providing personal grooming or cosmetics services.
f. Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged.

(5) It was not formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.

(6) It is not a real estate-related business.

The effective date of registration for a qualified business venture whose application is accepted for registration is ~~the filing date of its application.~~ 60 days before the date its application was filed. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked. For the purpose of this Article, if a taxpayer's investment is placed initially in escrow conditioned upon other investors' commitment of additional funds, the date of the investment is the date escrowed funds are transferred to the qualified business venture free of the condition.

To remain qualified as a qualified business venture, the business must renew its registration annually as prescribed by rule by filing a financial statement for the most recent fiscal year showing gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis and an application for renewal in which the business certifies the facts required in the original application.

Failure of a qualified business venture to renew its registration by the applicable deadline shall result in revocation of its registration effective as of the next day after the renewal deadline, but shall not result in forfeiture of tax credits previously allowed to taxpayers who invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall send the qualified business venture notice of revocation within 60 days after the renewal deadline. A qualified business venture may apply to have its registration reinstated by the Secretary of State by filing an application for reinstatement, accompanied by the reinstatement application fee and a late filing penalty of one thousand dollars ($1,000), within 30 days after receipt of the revocation notice from the Secretary of State. A business that seeks approval of a new application for registration after its registration has been revoked must also pay a penalty of one thousand dollars ($1,000). A registration that has been reinstated is treated as if it had not been revoked.

If the gross revenues of a qualified business venture exceed five million dollars ($5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this fact by filing a financial statement showing the revenues of the business for that year."

Section 30. The Revenue Laws Study Committee shall study whether a taxpayer should receive reimbursement of legal costs, including reasonable attorney

fees, from the State when the taxpayer substantially prevails in an administrative appeal or a lawsuit with respect to the amount in controversy or with respect to the most significant issue or set of issues presented. The Committee may report its findings and recommendations on this issue to the 1999 Regular Session of the 1999 General Assembly.

Section 31. G.S. 105-275(32) is recodified as G.S. 105-278.6A and reads as rewritten:

"**§ 105-278.6A. Qualified retirement facility.**

(a) Classification. -- Real and personal property owned by a ~~home for the aged, sick, or infirm, that is exempt from tax under Article 4 of this Chapter,~~ qualified retirement facility and used in the operation of that ~~home.~~ facility is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and shall not be listed, assessed, or taxed.

(b) Facility Defined. -- As used in this section, the term 'retirement facility' means a ~~The term "home for the aged, sick, or infirm" means a self-contained~~ community that meets all of the following conditions:

(1) Its grounds and buildings are at a single site.

(2) It ~~(i)~~ is designed for elderly ~~residents; (ii)~~ residents.

(3) It includes independent living units for elderly residents.

(4) ~~operates~~ It includes a skilled nursing ~~facility, an intermediate care facility, or a home for the aged; (iii)~~ facility or an adult care facility.

~~includes residential dwelling units, recreational facilities, and service facilities; (iv) the charter of which~~

(c) Qualification. -- A retirement facility qualifies for the benefits of this section if it meets all of the following conditions:

(1) It is exempt from tax under Article 4 of this Chapter and private shareholders do not benefit from its operations.

(2) All of its revenues, less operating and capital expenses, are applied to providing uncompensated goods and services to the elderly and to the local community, or are applied to an endowment or a reserve for these purposes.

(3) Its charter provides that in the event of dissolution, its assets will revert or be conveyed to an entity that is organized exclusively for charitable, educational, scientific, or religious purposes, and ~~which qualifies as~~ is an exempt organization under ~~Section 501(c)(3) of the Internal Revenue Code of 1986;~~ section 501(c)(3) of the Code.

~~(v) is owned, operated, and managed by one of the following entities:~~

~~a. A congregation, parish, mission, synagogue, temple, or similar local unit of a church or religious body;~~

~~b. A conference, association, division, presbytery, diocese, district, synod, or similar unit of a church or religious body;~~

~~c. A Masonic organization whose property is excluded from taxation pursuant to G.S. 105-275(18); or~~

~~d. A nonprofit corporation~~

(4) Its charter or bylaws, as it existed on August 15, 1998, provide that it is governed by a board of directors or trustees at least a majority of whose members ~~elected for terms commencing on or before December 31, 1987, shall have been elected or confirmed by, and all of whose members elected for terms commencing after December 31, 1987, shall be~~ are selected ~~by,~~ by one or more ~~entities described in A., B., or C. of this subdivision, or organized for a religious purpose as defined in G.S. 105-278.3(d)(1); and~~ nonprofit corporations that meet all of the following conditions:

a. It is exempt under section 501(c)(3) of the Code.

b. It is organized for a charitable purpose as defined in G.S. 105-278.6.

c. It is not a private foundation as defined in section 509 of the Code.

(5) ~~(vi)~~ It has an active program to generate funds through one or more sources, such as gifts, grants, trusts, bequests, endowment, or an annual giving program, to assist the ~~home~~ retirement facility in serving persons who might not be able to reside ~~at the home~~ there without financial assistance or subsidy."

Section 32. G.S. 105-164.14(b)(4) reads as rewritten:

"(4) ~~Homes for the aged, sick, or infirm~~ Qualified retirement facilities whose property is excluded from property tax under G.S. ~~105-275(32).~~ 105-278.6A."

Section 33. G.S. 105-273 is amended by adding a new subdivision to read:

"(4a) Code. -- Defined in G.S. 105-228.90."

Section 34. The Legislative Research Commission shall conduct a comprehensive study of property tax exemptions for nonprofit institutions, including the history and evolution of such exemptions in North Carolina, the policy reasons for property tax exemptions, the effect of the exemptions on local governments and on other taxpayers, the extent to which other states provide property tax exemptions for nonprofit institutions, and any other issues it considers relevant. The Legislative Research Commission may make an interim report of its findings and recommendations on this issue to the 1999 Regular Session of the 1999 General Assembly and shall make a final report of its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly. The temporary property tax exemption provided in Section 32 of this act shall not be considered a precedent or guideline for the purpose of the Legislative Research Commission's study or recommendations.

Section 35. (a) Sections 1 - 22 of this act become effective January 1, 1999.

(b) Sections 25 through 29 of this act are effective for taxable years beginning on or after January 1, 1998.

(c) Section 31 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1998. Notwithstanding the provisions of G.S. 105-282.1(a), an application for the benefit provided in Section 31 of this act for the 1998-99 tax year is timely if it is filed on or before October 1, 1998. Section 31 of this act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2000.

(d) Sections 23, 24, and 32 through 35 of this act are effective when this act becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1241 A BILL TO BE ENTITLED AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID, TO PROVIDE THAT RULE 11 OF THE RULES OF CIVIL PROCEDURE APPLIES TO TAX APPEALS BEFORE THE TAX REVIEW BOARD, TO EXTEND THE SUNSET ON THE QUALIFIED BUSINESS INVESTMENT TAX CREDIT, TO AMEND THE QUALIFIED BUSINESS INVESTMENT TAX CREDIT TO PROVIDE AN INCENTIVE FOR INVESTMENT IN SMALL FILM PRODUCTION BUSINESSES, AND TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO STUDY WHETHER A TAXPAYER WHO PREVAILS IN AN ADMINISTRARIVE APPEAL OR A LAWSUIT SHOULD RECEIVE REIMBURSEMENT OF EXPENSES IN CERTAIN CIRCUMSTANCES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

VISITOR REGISTRATION SHEET

Horse Pasture — Aug. 18, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bill Flournoy	DENR
Kathy Treanor	Piedmont Land Conservancy PO Box 4025 Greensboro 27404
Camilla Herlevich	120 Market St NC Coastal Land Trust Wilmington NC 28401
Tom Schoenvogel	NCANPHA
Reginald W. Ponder	NCANPHA
Stacy Flannery	NCANPHA
Ed Regan	N.C.A.C.C.
Rod Alcock	N.C.A.C.C.
John Evans	D.O.A.
Alice Garland	Electricities
Sandy Sands	WCSR
Danny Rogers	NCDOT

VISITOR REGISTRATION SHEET

House Finance — Aug 18, 98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
	WCSR
	OSBM
	NCAICU
	NCANPHA
Steve Woodson	NCFB
	WCSR
	DOR
Jane Gray	DOT
	NC 4H
	DOR
Sabra Faires	DOR
NANCY POMERANZ	DOR

VISITOR REGISTRATION SHEET

Horse Pasture — Aug 18, 98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Wilbur Benny	NCDA
Jay May	Womble Carlyle
JAMES M. WARREN	NCDA & CS
David McLeod	NCDA & CS
Barry Smith	Freedom Communication
TAYLOR JEFFREYS	JEFFREYS SEED COMPANY
JULIAN PHILPOTT	NC FARM BUREAU
Charles Roe	Conservation Trust
Dan McLamb	DENR
Ron Sawitt	Lobbyist
Laura DeVivo	DENR
L. Rogers	DENR

VISITOR REGISTRATION SHEET

House Finance — Aug 18, 98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kathryn Sawyer	Commerce
Bill Williams	Commerce
Andy Romanet	N.C. League of Municipalities
Ron Aycock	County Comm. Assoc
Catherine Davis	Electricities of NC
V L McBride	NCDA
John Cyrus	PPAB
Willie Reddy	DOR
Martha Glass	DOA

VISITOR REGISTRATION SHEET

House Finance — Aug. 18, 1998 (PM)

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ron Aycock	County Com. Assoc.
Jack Cozart	Parker Poe Adams & Bernstein
Reginald W. Ponder	North Carolina Assoc. of Non-Profit Homes for the Aging
Stacy Flannery	Non Profit Homes for the Aging
[signature]	Perry J. Gordon
Andy Romanet	N.C.L.M.
[signature]	[illegible]
[signature]	NCANPHA
[signature]	WCSR
David Simmons	ZDA, PA
[signature]	DOR
Sabra Faires	DOR

VISITOR REGISTRATION SHEET

House Finance — Aug 18, 98 PM

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Barry Smith	Freedom Communications
Cassy Sauer	NHCAA
Bob Dail	DOR

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, AUGUST 12, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Wednesday, August 12, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Chairman Gray called the meeting to order and introduced the Pages.

HB-497 EXTEND ESC ZERO TAX RATE

Rep. C. Wilson moved for adoption of the proposed committee substitute for discussion. So moved. She then explained the bill. Mr. Parker Chesson, Chairman of the Employment Security Commission, addressed members and spoke in favor of the bill. Rep. Neely moved for a favorable report, unfavorable to the original bill. Rep. Arnold questioned Mr. Chesson and he responded. Rep. Wilson also responded to comments made by Rep. Arnold. Rep. Brown spoke in favor of the bill. Rep. Womble also supports the bill. He asked Rep. Wilson a series of questions to which she responded. Rep. Brawley spoke in favor of the bill. The vote was taken and passed.

SB-1556 AMEND EDUCATION FINANCE ACT

Sen. Rand explained the bill. Rep. McMahan spoke in favor of the bill and moved for a favorable report. Rep. Ramsey asked if this would danger any governmental agency. Sen. Rand responded. Rep. Jarrell asked what the bond money could be used for and the Sen. Explained. Rep. Arnold spoke and endorsed the bill. Rep. Cunningham asked staff a clarifying question and Ms. Martha Harris, Bill Drafting Division responded. Rep. Luebke questioned the constitutionality regarding church schools. Sen. Rand responded. Ms. Harris made additional comments. Rep. Boyd-McIntyre asked if charter schools would be affected and Sen. Rand answered. Rep. Baddour spoke in favor of the bill. Rep. Barefoot questioned buildings built on church property and then the schools close. Sen. Rand explained. Rep. Jarrell asked how to qualify for educational financing and Sen. Rand explained. Rep. Miller questioned staff for information to be provided for those who have taken advantage of these types of bonds. Ms. Harris responded. Rep. Miller then asked for the fiscal information. Mr. Bob

High, State Treasurer Department addressed members and provided an answer. The vote was taken and given a favorable report.

The meeting adjourned at 9:05 a.m.

Rep. Gray, Chairman

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

WEDNESDAY, AUGUST 12, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

BILLS FOR DISCUSSION:

HB-497 Extend Esc Zero Tax Rate	Rep. C. Wilson
SB-1556 Amend Education Finance Act	Sen. Rand

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 497
Proposed Committee Substitute H497-PCS3174-LC

Short Title: LRC Study Employment Security. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE UNEMPLOYMENT INSURANCE TAX AND OTHER EMPLOYMENT SECURITY ISSUES.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission is authorized to study issues relating to the State's Employment Security Law, Chapter 96 of the General Statutes, with an emphasis on the unemployment insurance tax. The Legislative Research Commission is encouraged to appoint members of the public, including representatives of employers and employees, as well as legislators to participate in the study.

Section 2. The study shall include the following issues:

(1) The effect of past adjustments in the unemployment insurance tax rate on current and future balances of the State Unemployment Insurance Trust Fund.

(2) Changes in the North Carolina economy and job market, and their effect on the balance of the State Unemployment Insurance Trust Fund.

(3) What minimum and maximum balances would be most reasonable for the Fund to assure that it will be adequate but not excessive.

(4) Whether the State should adopt a mechanism to adjust unemployment insurance tax rates automatically when the recommended minimum or maximum balances are reached.

(5) Whether to adjust reporting requirements with respect to employment security laws.

(6) Other state's laws, including innovative reforms adopted by other states that may serve as a model for North Carolina.

(7) Issues raised by the Employment Security Commission regarding its activities under Chapter 96 of the General Statutes.

(8) Any other issues the Legislative Research Commission considers relevant.

Section 3. The Commission may make a final report of its recommendations regarding the Employment Security Law to the 1999 General Assembly.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 497

Short Title: Extend ESC Zero Tax Rate. (Public)

Sponsors: Representatives C. Wilson; Hardy and Davis.

Referred to: Commerce, if favorable, Finance.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND FOR AN ADDITIONAL YEAR THE ZERO UNEMPLOYMENT INSURANCE TAX RATE FOR POSITIVE-RATED EMPLOYERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(b)(3)d4. reads as rewritten:

"d4. **(See editor's note for effective date)** The standard beginning contribution rate set by subdivision (1) of this subsection applies to an employer unless the employer's account has a credit balance or a debit balance. Notwithstanding the provisions of subdivision (3)d3. of this subsection, beginning January 1, 1996, and for the calendar year 1996 and the calendar year 1997 only, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)

		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70	2.70	2.70	0.00	0.00	0.00	0.00	0.00	0.00
0.2%	0.4%	2.70	2.70	2.70	0.00	0.00	0.00	0.00	0.00	0.00
0.4%	0.6%	2.70	2.70	2.50	0.00	0.00	0.00	0.00	0.00	0.00
0.6%	0.8%	2.70	2.50	2.30	0.00	0.00	0.00	0.00	0.00	0.00
0.8%	1.0%	2.50	2.30	2.10	0.00	0.00	0.00	0.00	0.00	0.00
1.0%	1.2%	2.30	2.10	1.90	0.00	0.00	0.00	0.00	0.00	0.00
1.2%	1.4%	2.10	1.90	1.70	0.00	0.00	0.00	0.00	0.00	0.00
1.4%	1.6%	1.90	1.70	1.50	0.00	0.00	0.00	0.00	0.00	0.00
1.6%	1.8%	1.70	1.50	1.30	0.00	0.00	0.00	0.00	0.00	0.00
1.8%	2.0%	1.50	1.30	1.10	0.00	0.00	0.00	0.00	0.00	0.00
2.0%	2.2%	1.30	1.10	0.90	0.00	0.00	0.00	0.00	0.00	0.00
2.2%	2.4%	1.10	0.90	0.80	0.00	0.00	0.00	0.00	0.00	0.00
2.4%	2.6%	0.90	0.80	0.70	0.00	0.00	0.00	0.00	0.00	0.00
2.6%	2.8%	0.80	0.70	0.60	0.00	0.00	0.00	0.00	0.00	0.00
2.8%	3.0%	0.70	0.60	0.50	0.00	0.00	0.00	0.00	0.00	0.00
3.0%	3.2%	0.60	0.50	0.40	0.00	0.00	0.00	0.00	0.00	0.00
3.2%	3.4%	0.50	0.40	0.30	0.00	0.00	0.00	0.00	0.00	0.00
3.4%	3.6%	0.40	0.30	0.20	0.00	0.00	0.00	0.00	0.00	0.00
3.6%	3.8%	0.30	0.20	0.15	0.00	0.00	0.00	0.00	0.00	0.00
3.8%	4.0%	0.20	0.15	0.10	0.00	0.00	0.00	0.00	0.00	0.00
4.0%	4.2%	0.15	0.10	0.09	0.00	0.00	0.00	0.00	0.00	0.00
4.2%	4.4%	0.10	0.09	0.08	0.00	0.00	0.00	0.00	0.00	0.00
4.4%	4.6%	0.09	0.08	0.07	0.00	0.00	0.00	0.00	0.00	0.00
4.6%	4.8%	0.08	0.07	0.06	0.00	0.00	0.00	0.00	0.00	0.00
4.8%	5.0%	0.07	0.06	0.05	0.00	0.00	0.00	0.00	0.00	0.00
5.0%	OVER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00"

Section 2. This act is effective with respect to calendar quarters beginning on or after January 1, 1997, and before January 1, 1998.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☐ Committee Substitute for
H.B. 497 A BILL TO BE ENTITLED AN ACT TO EXTEND FOR AN ADDITIONAL YEAR THE ZERO UNEMPLYMENT INSURANCE TAX RATE FOR POSITIVE-RATED EMPLOYERS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1556
Finance Committee Substitute Adopted 7/14/98

Short Title: Amend Education Finance Act. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND TAX-EXEMPT FINANCING UNDER THE HIGHER EDUCATION FACILITIES FINANCE ACT TO PRIVATE ELEMENTARY AND SECONDARY SCHOOL FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. The title of Chapter 115E of the General Statutes reads as rewritten:

"Chapter 115E.

~~Higher~~ Private Educational Facilities Finance Act."

Section 2. G.S. 115E-1 reads as rewritten:

"**§ 115E-1. Short title.**

This Chapter shall be known, and may be cited, as the '~~Higher~~ 'Private Educational Facilities Finance Act.'"

Section 3. G.S. 115E-2 reads as rewritten:

"**§ 115E-2. Legislative findings.**

It is hereby declared that for the benefit of the people of the State of North Carolina, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that they be given the fullest opportunity to learn and to develop their intellectual capacities; that it is essential for institutions ~~of~~ for higher education and institutions for elementary and secondary education within the State to be able to construct and renovate facilities to assist its citizens in achieving the fullest development of their intellectual capacities; and that it is the purpose of this Chapter to provide a measure of assistance and an

alternative method to enable private institutions ~~of~~ for higher education and institutions for elementary and secondary education in the State to provide the facilities and the structures ~~which~~ that are needed to accomplish the purposes of this Chapter, all to the public benefit and good, to the extent and in the manner provided herein.

It is hereby further declared that this purpose will benefit the people as a way to improve student learning, increase learning opportunities for all students, encourage the use of different and innovative teaching methods, create new professional opportunities for teachers, provide parents and students with expanded choices in the types of educational opportunities that are available, and lower the overall cost of education to the State and to parents and students."

Section 4. G.S. 115E-3 reads as rewritten:

"§ 115E-3. Definitions.

As used or referred to in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Agency" means the North Carolina Educational Facilities Finance Agency created by this Chapter, or, should said agency be abolished or otherwise divested of its functions under this Chapter, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Chapter to the agency.

(2) "Cost", as applied to any project or any portion thereof financed under the provisions of this Chapter, means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the agency, for a period not exceeding two years after the estimated date of completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consulting and legal services and other expenses necessary or incident to determining the feasibility or practicability of constructing or equipping a project, the cost of administrative and other expenses necessary or incident to the construction or acquisition of a project and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service, and the cost of reimbursing any participating institution ~~for higher education~~ for any payments made for any cost described above or the refinancing of any cost

described above, including any evidence of indebtedness incurred to finance such cost; provided, however, that no payment shall be reimbursed or any cost or indebtedness be refinanced if such payment was made or such cost or indebtedness was incurred ~~earlier than five years prior to the effective date of this Chapter.~~ before November 25, 1981.

(3) "Project" means any one or more buildings, structures, improvements, additions, extensions, enlargements or other facilities for use primarily as a dormitory or other housing facility, including housing facilities for student nurses, a dining hall and other food preparation and food service facilities, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, laundry facility, and maintenance, storage or utility facility and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher ~~education,~~ education or an institution for elementary and secondary education, including parking and other facilities or structures essential or convenient for the orderly conduct of such ~~institution for higher education,~~ an institution, or any combination of the foregoing, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of an institution for higher education or an institution for elementary and secondary education or a particular facility, building or structure thereof in the manner for which its use is intended but shall not include such items as books, fuel, supplies or other items the costs of which are customarily deemed to result in a current operating charge, and shall not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility ~~which~~ that is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(4) "Bonds" or "notes" means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Chapter, including revenue refunding bonds, notwithstanding that the same may be secured by a deed of trust or the full faith and credit of a participating institution ~~for higher education~~ or any other lawfully pledged security of a participating ~~institution for higher education.~~ institution.

(4a) "Institution for elementary and secondary education" means a nonprofit institution within the State of North Carolina authorized by law and engaged or to be engaged in the providing of

kindergarten, elementary, or secondary education, or any combination thereof.

(5) "Institution for higher education" means a nonprofit private educational institution within the State of North Carolina authorized by law to provide a program of education beyond the high school level.

(6) "Participating ~~institution for higher education"~~ institution" means an institution for higher education or an institution for elementary and secondary education that, ~~which,~~ pursuant to the provisions of this Chapter, undertakes the financing, refinancing, acquiring, constructing, equipping, providing, owning, repairing, maintaining, extending, improving, rehabilitating, renovating or furnishing of a project or undertakes the refunding or refinancing of obligations or of a deed of trust or a mortgage or of advances as provided in this Chapter.

(7) "State" means the State of North Carolina."

Section 5. G.S. 115E-5 reads as rewritten:

"**§ 115E-5. General powers.**

The agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

(1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Chapter, including loan agreements and agreements of sale or leases with, mortgages and deeds of trust and conveyances to participating ~~institutions of higher education,~~ institutions, persons, firms, corporations, governmental agencies and others and including credit enhancement agreements;

(2) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any project, upon such terms and at such cost as shall be agreed upon by the owner and the agency;

(3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any project;

(4) To sell, convey, lease as lessor, mortgage, exchange, transfer, grant a deed of trust in, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(5) To pledge or assign any money, purchase price payments, rents, loan repayments, charges, fees or other revenues, including any federally guaranteed securities and moneys received therefrom

whether such securities are initially acquired by the agency or a participating ~~institution for higher education,~~ institution, and any proceeds derived by the agency from sales of property, insurance, condemnation awards or other sources;

(6) To pledge or assign the revenues and receipts from any project and any loan agreement, agreement of sale or lease of the loan repayments, purchase price payments, rent and income received thereunder;

(7) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of any project, to lend money to any participating institution ~~for higher education~~ for the acquisition of any federally guaranteed securities and to issue revenue refunding bonds;

(8) To finance, refinance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any project and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the agency for such purpose;

(9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, loan repayments, fees, rates and charges for the use of, or services rendered by, any project;

(10) To employ fiscal consultants, consulting engineers, architects, attorneys, feasibility consultants, appraisers and such other consultants and employees as may be required in the judgment of the agency and to fix and pay their compensation from funds available to the agency therefor;

(11) To conduct studies and surveys respecting the need for projects and their location, financing and construction;

(12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to any project from federal and State agencies or instrumentalities;

(13) To sue and be sued in its own name, plead and be impleaded;

(14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use any such federally guaranteed security or federally insured mortgage note in such manner as the agency deems in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any participating institution ~~for higher education~~ to finance or refinance the cost of any project;

(15) To make loans to any participating institution ~~for higher education~~ for the cost of a project in accordance with an agreement between the agency and the participating ~~institution for higher education;~~ institution;

(16) To make loans to a participating institution ~~for higher education~~ to refund outstanding loans, obligations, deeds of trust or advances issued, made or given by such participating institutions ~~for higher education~~ for the cost of a project;

(17) To charge and to apportion among participating institutions ~~for higher education~~ its administrative costs and expenses incurred in the exercise of its powers and duties conferred by this Chapter;

(18) To adopt an official seal and alter the same at pleasure; and

(19) To do all other things necessary or convenient to carry out the purposes of this ~~chapter.~~ Chapter."

Section 6. G.S. 115E-6 reads as rewritten:

"**§ 115E-6. Criteria and requirements.**

In undertaking any project pursuant to this Chapter, the agency shall be guided by and shall observe the following criteria and requirements; provided that the determination of the agency as to its compliance with such criteria and requirements shall be final and conclusive:

(1) No project shall be sold or leased nor any loan made to any institution for higher education or any institution for elementary and secondary education ~~which~~ that is not financially responsible and capable of fulfilling its obligations, including its obligations under an agreement of sale or lease or a loan agreement to make purchase price payments, to pay rent, to make loan repayments, to operate, repair and maintain at its own expense the project and to discharge such other responsibilities as may be imposed under the agreement of sale or lease or loan agreement;

(2) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves therefor and for the operation, repair and maintenance of the project at the expense of the participating ~~institution for higher education;~~ institution;

(3) The public facilities, including utilities, and public services necessary for the project will be made available; and

(4) The projects shall be operated to serve and benefit the public and there shall be no discrimination against any person based on race, creed, color or national origin."

Section 7. G.S. 115E-7 reads as rewritten:

"**§ 115E-7. Procedural requirements.**

Any institution for higher education or any institution for elementary and secondary education may submit to the agency, and the agency may consider, a proposal for financing a project using such forms and following such instructions as

may be prescribed by the agency. Such proposal shall set forth the type and location of the project and may include other information and data available to the institution for higher education or the institution for elementary and secondary education respecting the project and the extent to which such project conforms to the criteria and requirements set forth in this Chapter. The agency may request the institution for higher education or the institution for elementary and secondary education to provide additional information and data respecting the project. The agency is authorized to make or cause to be made such investigation, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the project, the extent to which the project will contribute to the health and welfare of the area in which it will be located, the powers, experience, background, financial condition, record of service and capability of the management of the institution for higher education or the institution for elementary and secondary education, the extent to which the project otherwise conforms to the criteria and requirements of this Chapter, and such other factors as may be deemed relevant or convenient in carrying out the purposes of this Chapter."

Section 8. G.S. 115E-8 reads as rewritten:

"§ 115E-8. Operations of projects; agreements of sale on leases; conveyance of interest in projects.

The agency may sell or lease any project to a participating institution ~~for higher education~~ for operation and maintenance or lend money to any participating institution ~~for higher education~~ in such manner as shall effectuate the purposes of this Chapter, under a loan agreement or an agreement of sale or lease in form and substance not inconsistent herewith. Any such loan agreement or agreement of sale or lease may include provisions that:

(1) The participating institution ~~for higher education~~ shall, at its own expense, operate, repair and maintain the project covered by such agreement;

(2) The purchase price payments to be made under the agreement of sale, the rent payable under the agreement of lease or the loan repayments under the loan agreement shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal and any redemption premium on the bonds or notes issued by the agency to pay the cost of the project sold or leased thereunder or with respect to which the loan was made;

(3) The participating institution ~~for higher education~~ shall pay all other costs incurred by the agency in connection with the providing of the project covered by any such agreement, except such costs as may be paid out of the proceeds of bonds or notes or otherwise, including, but without limitation, insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes and the fees and expenses of trustees, paying agents, attorneys, consultants and others;

(4) The loan agreement or the agreement of sale or lease shall terminate not earlier than the date on which all such bonds and all other obligations incurred by the agency in connection with the project covered by any such agreement ~~shall be~~ are retired or provision for such retirement ~~shall be~~ is made; and

(5) The obligation of the participating institution ~~for higher education~~ to make loan repayments or purchase price payments or to pay rent shall not be subject to cancellation, termination or abatement by the participating institution ~~for higher education~~ until the bonds have been retired or provision has been made for such retirement.

~~Where~~ If the agency has acquired a possessory or ownership interest in any project ~~which~~ it has undertaken on behalf of a participating ~~institution for higher education~~ institution, it shall promptly convey, without the payment of any consideration, all its right, title and interest in such project to such participating institution ~~for higher education~~ upon the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with such project."

Section 9. G.S. 115E-9 reads as rewritten:

"**§ 115E-9. Construction contracts.**

If the agency ~~shall determine~~ determines that the purposes of this ~~chapter~~ Chapter will be more effectively served, the agency in its discretion may award or cause to be awarded contracts for the construction of any project on behalf of a participating institution ~~for higher education~~ upon a negotiated basis as determined by the agency. The agency shall prescribe such bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest. The agency may by written contract engage the services of the participating institution ~~for higher education~~ in the construction of such project and may provide in any such contract that such participating ~~institution for higher education,~~ institution, subject to such conditions and requirements consistent with the provisions of this Chapter as shall be prescribed in such contract, may act as an agent of, or an independent contractor for, the agency for the performance of the functions described therein, including the acquisition of the site and other real property for such project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of such project directly by such participating ~~institution for higher education,~~ institution, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost thereof pending reimbursement by the agency. Any such contract may provide that the agency may, out of proceeds of bonds or notes, make advances to or reimburse the participating institution ~~for higher education~~ for its costs incurred in the performance of such functions, and shall set forth the supporting documents required to be submitted to the agency and the reviews, examinations and audits that shall be required in connection therewith to assure compliance with the provisions of this Chapter and such contract."

Section 10. G.S. 115E-13(a) reads as rewritten:

"(a) The agency is hereby authorized to fix and to collect fees, loan repayments, purchase price payments, rents and charges for the use of any project, and any part or section thereof, and to contract with any participating institution ~~for higher education~~ for the use thereof. The agency may require that the participating institution ~~for higher education~~ shall operate, repair or maintain such project and shall bear the cost thereof and other costs of the agency in connection therewith, all as may be provided in the agreement of sale or lease, loan agreement or other contract with the agency, in addition to other obligations imposed under such agreement or contract."

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

EXPLANATION OF SENATE BILL 1556 (2nd Edition):
Amend Education Finance Act

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 7, 1998
SPONSOR: Senator Rand

This bill would add private institutions for elementary and secondary education to the Educational Facilities Finance Act, which currently covers only private institutions for higher education. An institution for elementary and secondary education is defined as a nonprofit institution providing kindergarten, elementary, or secondary education, or any combination of the three. Under the act, a qualifying institution may obtain tax-exempt financing to acquire, construct, and improve educational facilities. Tax-exempt financing may include revenue bonds issued by the Educational Facilities Finance Agency or other forms of debt, but does not include any financing that would pledge the faith or credit of the State or any political subdivision. The interest rates on tax-exempt financing are significantly lower than on taxable financing. The educational institution must pay for the entire cost of the financing and of the facility being financed.

Tax-exempt financing is available for capital facilities, including parking, that are related to or useful to an educational institution and will be operated to serve and benefit the public.[1] In addition to the building, the financing may cover land acquisition, landscaping, site preparation, furniture, and machinery and equipment, as well as engineering and architectural services and other administrative expenses related to construction or acquisition of a project. Financing is not available under the act for facilities that will be used for sectarian instruction, as a place of religious worship, or in connection with a department of divinity for any religious denomination. Financing is not available for projects that discriminate based on race, creed, color, or national origin.

The Educational Facilities Finance Act is administered by the Educational Facilities Financing Agency, which is located in the Department of State Treasurer. The Agency has seven members: the State Treasurer, the State Auditor, one member appointed upon the recommendation of the President Pro

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[1] The law specifies the following facilities that may qualify: housing, dining halls and food preparation centers, student unions, administration buildings, academic buildings, libraries, laboratories, research facilities, classrooms, athletic facilities, health care facilities, laundry facilities, maintenance, storage, and utility facilities, and parking facilities.

Tempore of the Senate, one member appointed upon the recommendation of the Speaker of the House of Representatives, and three members appointed by the Governor. The appointive members must be residents of North Carolina and cannot hold other public office. The Agency is audited annually and submits an annual report to the Governor and the General Assembly.

An institution may qualify for tax-exempt financing only if the Agency finds that it is financially responsible and capable of fulfilling its obligations. Before financing is approved, the Agency must find that the educational institution has provided adequately for the payment of principal and interest on the bonds and for the operation, repair, and maintenance of the facility to be financed.

The Agency may issue bonds only if they are approved by the Local Government Commission. The Local Government Commission sets the interest rates on the bonds and administers their sale. The bonds may be secured by a trust agreement with a corporate trustee, such as a bank. The Agency will require the educational institution to pay fees, loan repayments, rents, or other charges sufficient to cover the payment of principal and interest on the bonds and the operation, repair, and maintenance of the facility to be financed, and the bonds will be secured by the pledge of these revenues.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1556 (PCS3626-LC)
SHORT TITLE: Amend Education Finance Act

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available (X)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The program would be administered by the Educational Facilities Financing Agency, located in the Department of State Treasurer. The bonds must be approved by the Local Government Commission, which will also set the interest rate on the bonds and administer the sale.

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: Adds private nonprofit elementary and secondary education institutions to the Education Facilities Finance Act. This would allow a qualifying institution to obtain tax-exempt financing to acquire, construct, and improve educational facilities. Such financing would not include general obligation debt. The institution would be required to pay for the entire cost of the facility and the financing of the facility.

ASSUMPTIONS AND METHODOLOGY: A discussion with the Department of State Treasurer indicated that any additional personnel and other requirements would depend on the volume of activity, which is unknown at this time. For a number of years the Department has been allowed to recover its cost in administering bonds through agency receipts. It is the intention of the Department to fully recover whatever costs are incurred under the new responsibilities.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
APPROVED BY: Tom Covington
DATE: July 9, 1998.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☒ Committee Substitute for
S.B. 1556 A BILL TO BE ENTITLED AN ACT TO EXTEND TAX-EXEMPT FINANCING UNDER THE HIGHER EDUCATION FACILITIES FINANCE ACT TO PRIVATE ELEMENTARY AND SECONDARY SCHOOL FACILITIES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

House Finance — Aug 12, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ed Regan	N.C. Assoc. of County Comm.
Bob High	Office of State Treasurer
Emily Neal	Massage & Bodywork Bill 1077
Roy Rogers	NCDOT
D Hudson	NCRA
Parker Chesson	ESC
David Clegg	ESC
Jeff Ryder	Bode Call & Stroupe
David Goins	OSBM
Dave Hunter	Smith Anderson
Mark Beason	Capital Group
Harold Webb	New millennium

VISITOR REGISTRATION SHEET

Horse Power

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
Fran Preston	NCRMA
Lucy Bode	Bowman Gray School of Medicine
Jim Bayle	Citizen
Jane Gray	DOJ
Harriet Deal	NCAE
Jean M Kilian	Mono - Vega Alla
John Rust	NCFPC
Jim Urbanek	CP&L
VL McBride	WSTA
John McAlister	Duke Energy
Natalie Hawkins	Charlotte Chamber

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, AUGUST 11, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Tuesday, August 11, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken (roll list denotes members present).

Chairman Gray called the meeting to order and announced that **HB-1055, Arbitration of Seed Claims**, would be removed from the agenda until Tuesday, August 18th.

HB-1488 1998 Marine Fisheries Amendment

Rep. Dickson moved for adoption of the proposed committee substitute for discussion. Rep. Preston explained the bill. Rep. Cunningham asked if there is any opposition. Rep. Preston advised of none to her knowledge. Rep. Cunningham then moved for a favorable report, unfavorable to the original bill. Rep. Ramsey asked if it affected in-land fishing. Rep. Rayfield asked about fishing licenses. Rep. Preston responded to both inquiries. The vote was taken and passed.

SB-1242 WIRELESS TELEPHONE SERVICE/TOWER ACT

Rep. Dickson explained the bill and sent forth a technical amendment. Chairman Gray read the amendment and Ms. Carolyn Johnson, Research Division gave a further explanation. The vote was taken on the amendment and passed. Rep. Brown asked about two phones with the same number and being double billed. Mr. Robert Kalor, Wireless Coalition, addressed members and explained. Rep. Brown moved for favorable report. Rep. Goodwin spoke in favor of the bill. Rep. Starnes asked what changes the Commerce sub-committee made to the bill. Ms. Johnson advised she would provide that information to him. Rep. Starnes was concerned about the abuse of the service. Rep. Dickson responded. Mr. Kalor also gave additional information. Rep. Brawley commented on the bill. Rep. Cole questioned the charges being set for a two year period. He also inquired about the cities and counties having authorization over zoning of towers. Ms. Johnson and Mr. Andy Romenet, League of Municipalities responded. Rep. Russell questioned limitation of liability and a time frame for installation. Rep. Dickson and Mr. Kalor responded. Rep. Cunningham asked how this compared to land-line 911 call charges. Mr. Kalor answered. Mr. Chris Jones, GTE

Wireless, addressed members. Rep. Luebke was concerned about the 80 cents charge. Mr. Jones and Mr. Kalor responded to his concerns/comments.

Rep. Luebke sent forth an amendment to cap the 80 cents. Rep. Dickson spoke on the amendment and advised he didn't feel it was a good amendment. Rep. Tallent questioned the small effect on small companies. Mr. Kalor and Rep. Dickson replied. Rep. Luebke made additional comments. Rep. Nichols asked for clarification in the amendment and the bill. Ms. Johnson explained. Rep. Brown was concerned about the 80 cents affecting smaller companies and he opposed the amendment. Rep. Russell asked how many small companies there are in North Carolina. Rep. Dickson and Mr. Kalor responded. Rep. Brawley spoke against the amendment. Rep. Starnes spoke in favor of the amendment. Ms. Johnson responded to his comments. Rep. Dedmon spoke in favor of the amendment. Rep. Neely spoke and Rep. Dickson responded to his comments. Rep. Wright questioned if the Utilities Commission has any control over this. Rep. Dickson answered. Rep. Nesbitt asked if the wireless industry is regulated by the Utilities Commission. Mr. Kalor answered. Rep. Eddins spoke a second time and opposed the amendment. Rep. McComas spoke against the amendment.

The vote was taken and division was called. The amendment passed with 16-14 vote.

Rep. Barefoot asked about leases and where the towers will be placed. Ms. Johnson explained. Rep. Miller questioned the authority of the Board. Mr. Kalor responded. Mr. Steve Skinner, BellSouth, also addressed members. Rep. Miller continued with a series of questions and comments. Rep. Miller advised he would like to send forth an amendment.

Time expired and Chairman Gray announced we will meet again to continue discussion 15 minutes after session this afternoon.

The meeting adjourned at 9:50 a.m.

The House Finance Committee reconvened at 2:45 p.m.

Rep. Jarrell asked what taxes and fees are in a cellular phone bill. Ms. Linda Millsaps advised she would provide this information for her. Rep. Miller questioned Mr. Jones, GTE, and he responded. Rep. Miller continued with questions regarding how long before enhanced service would be available for the entire state and how will the charges be listed on customers phone bills. Mr. Jones, Mr. Kalor and Rep. Dickson responded to his inquiries and comments.

Rep. Miller sent forth an amendment, which Chairman Gray read and Ms. Johnson and Rep. Miller explained. Rep. Neely spoke against the amendment. Rep. Brawley asked Mr. Kalor how much it will cost to construct the towers and he responded. Rep. Brawley then spoke against the amendment. Rep. Arnold urged defeat of the amendment. Rep. Cunningham questioned the need for additional equipment. Mr. Richard Taylor, Communications Director for New Bern, addressed members. Rep. Cunningham then questioned Rep. Miller. Rep. Allred spoke in favor of the amendment. Rep. Russell asked what action will taken for other 911 carriers if this amendment passes. Ms. Johnson explained. Rep. Dickson spoke again. Rep. Buchanan spoke. Rep. Miller spoke again and urged adoption of the amendment.

The vote was taken on the amendment and failed.

Rep. Buchanan asked about the towers in the mountains and when it can be expected. Mr. Jones responded. Rep. Cunningham spoke in favor of the bill. Rep. Starnes asked how much staff will be necessary for the Board. Rep. Dickson answered. Rep. Luebke was concerned about when the 80 cents fee would phase out. Mr. Kalor replied. Rep. Luebke made additional comments. Rep. Dickson addressed his comments. Mr. Kalor also made additional remarks.

Rep. Brown called the question. This passed. The vote was taken and given a favorable report, unfavorable to the original bill.

The meeting adjourned at 3:40 p.m.

Rep. Gray, Chairman

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

TUESDAY, AUGUST 11, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

BILLS FOR DISCUSSION:

*	HB-1055	Arbitration of Seed Claims	Rep. Russell
	HB-1448	1998 Marine Fisheries Amendment	Rep. Preston
*	SB-1241	Amendments to the Revenue Laws	Sen. Hoyle
	SB-1242	Wireless Telephone Service/Tower Act.	Sen. Hoyle

ADJOURNMENT

* Removed by sponsor

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1055*
Committee Substitute Favorable 6/4/97

Short Title: Arbitration of Seed Claims. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MANDATORY ARBITRATION OF CLAIMS RELATED TO DEFECTIVE SEED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.29 is repealed.

Section 2. Article 31 of Chapter 106 of the General Statutes is amended by adding the following new sections:

"**§ 106-277.30. Condition precedent to filing an action; notice required.**

(a) Complaint by Buyer. -- When a buyer believes that he or she has suffered damages due to the failure of agricultural or vegetable seed to produce or perform as labeled, as warranted, or as a result of negligence, the buyer shall make a sworn complaint against the dealer from whom the seeds were purchased, alleging the damages sustained or to be sustained, and file the complaint with the Commissioner of Agriculture within such time as to permit inspection of the seed, crops, or plants. The buyer shall send a copy of the complaint to the dealer by registered mail. A filing fee of one hundred dollars ($100.00) shall be paid to the Commissioner of Agriculture with each complaint filed. This fee may be used by the Commissioner to offset the expenses of the arbitration committee incurred under G.S. 106-277.32. Within 10 days after receipt of a copy of the complaint, the dealer may file an answer to the complaint and, in that event, shall send a copy to the buyer by registered mail.

(b) Notice Required. -- The seed dealer shall legibly print or type on the seed container or affix a label on the seed container a notice in the following form or using reasonably equivalent language:

'Notice of Mandatory Arbitration

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions against a seller of seed. Information about this requirement where applicable, may be obtained from a State's Commissioner of Agriculture or corresponding chief agricultural official.'

(c) Condition Precedent. -- Complying with subsection (a) of this section is a condition precedent to the buyer's right to file an action against the seed dealer. This subsection does not apply if the seed dealer fails to provide notice as required under subsection (b) of this section.

(d) Investigation Requested by Seed Dealer. -- Any seed dealer against whom an action is brought in any court, State or federal, by a buyer who alleges that the buyer has suffered damages due to the failure of seeds purchased from a seed dealer to perform as labeled, as warranted, or as a result of negligence may request an investigation by the arbitration committee pursuant to G.S. 106-277.32. A filing fee of one hundred dollars ($100.00) shall be paid to the Department of Agriculture by the party requesting the investigation.

(e) Referral to Committee. -- The Commissioner of Agriculture shall refer the complaint and the answer to the complaint, if any, to the arbitration committee to investigate and make findings and recommendations on the matters complained of pursuant to G.S. 106-277.32.

"**§ 106-277.31. Arbitration committee created; membership; duties.**

(a) The Commissioner of Agriculture shall appoint an arbitration committee composed of five members, three of whom shall be appointed upon the recommendation of the following: Director of the Agricultural Research Service, North Carolina State University; Director of the North Carolina Cooperative Extension Service, North Carolina State University; and President of the North Carolina Seedsmen's Association. The other two members shall include: one farmer who is not connected in any way to selling seeds at retail or wholesale and one employee of the Department of Agriculture. An alternate for each member shall also be appointed in the same manner as that member was appointed to serve whenever that member is unable or unwilling to serve. Each member of the committee shall serve until replaced by the Commissioner of Agriculture. The committee shall elect a chairperson. The chairperson shall conduct all meetings and deliberations and direct all other activities of the committee.

(b) A clerk shall be appointed to serve the committee. The clerk shall be an employee of the Department of Agriculture. The clerk shall keep accurate and correct records of all meetings and deliberations and perform other duties for the committee as directed by the chairperson.

(c) The purpose of the arbitration committee is to assist seed buyers and agricultural seed dealers in determining the matters alleged in complaints made by buyers against seed dealers.

(d) The arbitration committee may be called into session by the Commissioner of Agriculture at the Commissioner's discretion or upon the direction of the chairperson to consider the matters referred to it by the Commissioner of Agriculture.

(e) The Department shall provide administrative support for the investigation under this section. The committee shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party to a dispute upon receipt of a complaint.

(f) Members of the committee appointed by the Commissioner who are not governmental employees shall be entitled to receive reimbursement for necessary travel and subsistence expenses pursuant to G.S. 138-5. Other members of the committee shall not be entitled to any compensation or reimbursement of expenses from the Department of Agriculture.

(g) The Attorney General shall represent the committee in any and all legal proceedings that may arise concerning or against the committee.

"§ 106-277.32. Duties of arbitration committee.

(a) In conducting its investigation of claims referred by the Commissioner of Agriculture, the arbitration committee may engage in all of the following activities:

(1) Examine the buyer regarding the buyer's use of the seed of which the buyer complains and examine the seed dealer on the dealer's packaging, labeling, and selling of the seed alleged to be faulty.

(2) Grow a representative sample of the alleged faulty seed to production when such action is deemed by the committee to be necessary.

(3) Hold informal hearings at a time and place directed by the chairperson upon reasonable notice to the buyer and the seed dealer.

(4) Seek evaluations from authorities in allied disciplines, when deemed necessary by the committee.

(5) Visit and inspect the affected site and take samples, make plant counts, and take pictures of affected and unaffected areas.

(b) The committee shall keep a record of its activities and reports on file in the Department of Agriculture. The Department shall transmit all findings and recommendations to the buyer and to the seed dealer within 30 days of completion of the arbitration.

(c) No investigation shall be made by less than the whole membership of the committee unless the chairperson directs such investigation in writing. Such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations.

(d) The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in writing subsequent to the filing of a complaint pursuant to G.S. 106-277.30.

"§ 106-277.33. Filing an action regarding a defective seed claim.

(a) In the absence of an agreement to be bound by arbitration, a buyer may file an action against a seed seller or assert such claim as a counterclaim or defense in any action brought by the seed seller at any time after the receipt of the report of arbitration under G.S. 106-277.32.

(b) In any action involving a complaint that has been the subject of arbitration under G.S. 106-277.32, any party may introduce the report of arbitration as evidence of the facts found in the report, and the court may give such weight to the committee's findings and conclusions of law and recommendations as to damages and costs as the court deems appropriate, based upon all the evidence before the court. The court may consider any finding of the committee with respect to the failure of any party to cooperate in the arbitration proceedings, including any finding as to the effect of delay in filing the arbitration claim upon the committee's ability to determine the facts of the case."

Section 3. There is appropriated from the General Fund to the Department of Agriculture the sum of ten thousand dollars ($10,000) for the 1997-98 fiscal year and the sum of ten thousand dollars ($10,000) for the 1998-99 fiscal year to be used to implement and administer this act.

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

EXPLANATION OF HOUSE BILL 1055:
Arbitration of Seed Claims (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 10, 1998
SPONSOR: Representative Carolyn Russell

House Bill 1055 provides for mandatory, but non-binding arbitration of disputes between a buyer of seed and seed dealers. Section 1 repeals the current voluntary system North Carolina has and replaces it in Section 2 with a substantially similar, but mandatory one. Section 3 appropriates money from the General Fund to the Department of Agriculture to administer the mandatory arbitration. Section 4 provides that the act becomes effective July 1, 1997.

Under the bill, seed dealers would be required to provide notice of mandatory arbitration by placing notice on the seed container. If the notice is provided, a buyer of seed would be required to seek arbitration on issues involving defective seed before the buyer could initiate a court action. To initiate arbitration, the buyer must make a sworn complaint against the seed dealer, file the complaint with the Commissioner of Agriculture within time to permit the arbitration committee to inspect the seed, crops, or plants alleged to be defective before they are destroyed, and pay a filing fee of $100.

The arbitration committee has substantially the same membership as the current investigation committee: representatives of farm groups, seed companies, universities, and the Department of Agriculture, and one farmer who is not connected in any way to selling seeds at retail or wholesale. The arbitration committee will address issues which are technical in nature: the buyer's use of the seed, the seed dealer's packaging of the see, an evaluation of the seed's product, an inspection of the affected site, etc. The arbitration report is binding upon all parties IF the parties have agreed in writing that it will be binding. In the absence of such an agreement, a court action may be initiated by either party. At least 16 other states have similar legislation, including South Carolina and Georgia.

Technical Considerations:

- The effective date needs to be changed. If the Department is given the authority to adopt temporary rules to implement the bill, then the effective date can be as early as January 1, 1999. If the Department is not given the

authority to adopt temporary rules, the effective date will need to be at least July 1, 2000, to enable the Department to complete the rules review process.

- The appropriation needs to be examined.
- G.S. 106-277.30(d) allows a seed dealer to request an investigation by the arbitration committee if an action is brought in court. Is this section needed if the arbitration is required before a court action can be initiated?

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: H.B. 1055 CS 6/4/97

SHORT TITLE: Arbitration of Seed Claims

SPONSOR(S): Representative Russell

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	$1,850	$3,900	$4,100	$4,300	$4,500
EXPENDITURES	$10,000	$10,000			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Agriculture.

EFFECTIVE DATE: (See Technical Considerations).

BILL SUMMARY: The bill requires the parties involved in a disagreement about the quality of agricultural seeds to participate in special arbitration. The bill directs the Agriculture Commissioner to appoint a five-member arbitration committee. Three members will be appointed on the recommendations of the NCSU Agricultural Research Service Director, the Cooperative Extension Director, and the President of the North Carolina Seedmen's Association. The bill also directs the Commission to appoint one farmer (not connected to seed sales) and one Department employee to the arbitration committee. The committee must conduct an investigation when they receive a complaint from a buyer or a request for investigation from a dealer. The bill requires that the complaint be filed within a time period that allows for inspection of the affected seed, crops, or plants. Both dealers and buyers must pay a $100 fee when filing their complaint or request for investigation. Once a buyer files a complaint, the Department will notify the dealer and give that dealer ten days to file a response. After the 10 day period, the arbitration committee will begin their investigation, following the guidelines in the bill. The findings of the arbitration committee are binding if the buyer and dealer have

agreed, in advance, to abide by the decision of the committee. Under the bill, the decision of the buyer to purchase a product, with a special label outlining the arbitration requirement, constitutes an agreement to arbitration. (It does not constitute an agreement to binding arbitration, unless the parties all agree to binding arbitration in advance.) If legal action is taken by either party after the committee completes its investigation, the committee's findings are admissible as evidence. Under the bill, the court can take into account either party's failure to cooperate in arbitration, or the impact of any party's attempt to delay the committee's investigation. The bill also appropriates $10,000 each year, for two years, to implement the act.

ASSUMPTIONS AND METHODOLOGY: According to the Department of Agriculture's legal staff, Georgia is the only state with a seed arbitration program substantially similar to the bill. The Georgia seed arbitration program has been in operation for three years. The Georgia program received eight (8) complaints or requests for investigation in 1995, fifteen (15) in 1996, and thirty (30) in 1997. They also report receiving more than 30 complaints and/or requests for investigation, so far, in 1998. Based on these estimates, and the relative size of the seed market, the North Carolina Department of Agriculture estimates that they will receive twenty-five (25) buyer complaints and twelve (12) dealer requests for investigation. Assuming each buyer and dealer pays the $100.00 filing fee, the bill will generate $3,700 in FY 1998-9 (37 Total complaints and requests for investigation X $100). One-half of this amount is shown in the fiscal impact chart, as this note assumes a January 1, 1999, effective date for this section of the bill (see Technical Considerations).

The North Carolina Department of Agriculture expects the number of complaints and/or requests for investigation to increase with the continued development of genetically modified crop varieties. These new varieties are resistant to pests and tolerate certain herbicides. Because these genetically modified seeds are more expensive (Since the introduction of these genetically modified seeds three years ago, national farm expenditures for seeds have increased an average of 7.5% per year.), and the risks associated with non-performance greater, farmers are likely to seek compensation for seed failure. This note assumes 5% annual growth in the number of filings.

Officials with the North Carolina Department of Agriculture believe the costs associated with the bill will be approximately $10,000. The Department believes this amount is necessary to cover the meals and per diem expenses associated with board members who are not state employees, and staff travel for investigations. They also note that the bill creates some overhead expense.

TECHNICAL CONSIDERATIONS: The bill's current effective date is July 1, 1997. This is not feasible. As such, the note assumes a July 1, 1998, effective date for 106-277.31 (arbitration committee created) and a January 1, 1999, effective date for filings.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:
DATE: August 5, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1448*
Committee Substitute Favorable 7/29/98
Proposed Committee Substitute H1448-PCS4210-RT/SB007

Short Title: 1998 Marine Fisheries Amendments. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED MARINE FISHERIES LAWS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

PART I. MARINE FISHERIES COMMISSION

Section 1.1. G.S. 113-128(5a) reads as rewritten:

"(5a) Marine Fisheries Commission. -- The Marine Fisheries Commission of the Department as established by ~~Part 5A~~ Part 5D of Article 7 of Chapter 143B of the General Statutes."

Section 1.2. G.S. 120-123(53) reads as rewritten:

"(53) The North Carolina Marine Fisheries Commission as established by ~~G.S. 143B-289.5.~~ G.S. 143B-289.51."

Section 1.3. G.S. 143B-289.52(b)(3) reads as rewritten:

"(3) To govern all license requirements ~~and taxes~~ prescribed in Article 14 of Chapter 113 of the General Statutes."

Section 1.4. G.S. 143B-289.52 is amended by adding a new subsection to read:

"(d1) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the

harvest or landing of fish in the fishery. If the Commission regulates participation in a fishery under this subsection, the Division may issue a license to participate in the fishery to a person who:

(1) Held a valid license issued by the Division to harvest, land, or sell fish during at least two of the three license years immediately preceding the date adopted by the Commission to determine participation in the fishery; and

(2) Participated in the fishery during at least two of those license years by landing in the State at least the minimum number of pounds of fish adopted by the Commission to determine participation in the fishery."

Section 1.5. G.S. 143B-289.52(e) reads as rewritten:

"(e) The Commission may adopt rules to implement or comply with a ~~fisheries~~ fishery management plan adopted by the Atlantic States Marine Fisheries Commission or ~~an interstate fisheries management council.~~ adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a ~~fisheries~~ fishery management plan ~~by the Atlantic States Marine Fisheries Council [Commission] or an interstate fisheries management council.~~ or the notification of a change in management measures needed to remain in compliance with a fishery management plan."

Section 1.6. G.S. 143B-289.54(c) reads as rewritten:

"(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission. The Governor shall make appointments to the Commission consistent with the restrictions of G.S. 113-200(g)."

Section 1.7. G.S. 143B-289.54(h) reads as rewritten:

"(h) Removal. -- The Governor may remove, as provided in ~~G.S. 143-13,~~ G.S. 143B-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance."

PART II. FISHERY MANAGEMENT PLANS

Section 2.1. G.S. 113-182.1 reads as rewritten:

"§ 113-182.1. (Effective July 1, 1998) Fishery Management Plans.

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.22.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint ~~an Advisory Council.~~ a fishery management plan advisory committee. Each ~~Advisory Council~~ fishery management plan advisory committee shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a ~~Fisheries~~ Fishery Management Plan, once adopted, without the approval of the Secretary of Environment and Natural Resources.

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall concurrently review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on

the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(f) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes.

(g) To achieve optimal yield under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that optimal yield cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

(1) Current participation in and dependence on the fishery.
(2) Past fishing practices in the fishery.
(3) Economics of the fishery.
(4) Capability of fishing vessels used in the fishery to engage in other fisheries.
(5) Cultural and social factors relevant to the fishery and any affected fishing communities.
(6) Capacity of the fishery to support biological parameters.
(7) Equitable resolution of competing social and economic interests.
(8) Any other relevant considerations."

PART III. MARINE FISHERIES LAW ENFORCEMENT

Section 3.1. G.S. 113-136(b) reads as rewritten:

"(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part ~~5A~~ 5D of Article 7 of Chapter 143B of the General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources."

Section 3.2. G.S. 113-136(g) reads as rewritten:

"(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting ~~taxable~~ seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable license, ~~tax~~ receipts, permits, bills of lading, or other identification required to accompany such seafood products."

Section 3.3. G.S. 113-184(a) reads as rewritten:

"(a) It is unlawful to carry aboard any vessel subject to licensing requirements under ~~Article 14~~ Article 14A under way or at anchor in coastal fishing waters during the regular closed oyster season any scoops, scrapes, dredges, or winders such as are usually or can be used for taking oysters. Provided that when such vessels are engaged in lawfully permitted oyster harvesting operations on any privately held shellfish bottom lease under G.S. 113-202 or G.S. 113-205, the vessel shall be exempt from this requirement."

Section 3.4. G.S. 113-185(a) reads as rewritten:

"(a) It is unlawful to fish in the ocean from vessels or with a net within 750 feet of an ocean pier licensed in accordance with ~~G.S. 113-156.1.~~ G.S. 113-169.4. The prohibition shall be effective when:

(1) Buoys or beach markers, placed at the owner's expense in accordance with the rules adopted by the Marine Fisheries Commission, indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier, and

(2) The public is allowed to fish from the pier for a reasonable fee.

The prohibition shall not apply to littoral proprietors whose property is within 750 feet of a duly licensed ocean pier."

Section 3.5. G.S. 113-208(a) reads as rewritten:

"(a) It is unlawful for any person, other than the holder of private shellfish rights, to take or attempt to take shellfish from any privately leased, franchised, or deeded shellfish bottom area without written authorization of the holder and with actual knowledge it is a private shellfish bottom area. Actual knowledge will be presumed when the shellfish are taken or attempted to be taken:

(1) From within the confines of posted boundaries of the area as identified by signs, whether the whole or any part of the area is posted, or

(2) When the area has been regularly posted and identified and the person knew the area to be the subject of private shellfish rights.

A violation of this section shall constitute a ~~Class 2~~ Class A1 misdemeanor, which may include a fine of not more than five thousand dollars ($5,000). The written authorization shall include the lease number or deed reference, name and address of authorized person, date of issuance, and date of expiration, and it must be signed by the holder of the private shellfish right. Identification signs shall include the lease number or deed reference and the name of the holder."

Section 3.6. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation

can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. ~~The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation.~~ It is a defense to an enforcement action for a violation of a proclamation that a licensee was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight."

Section 3.7. G.S. 113-268 reads as rewritten:

"**§ 113-268. ~~Robbing or injuring~~ Injuring, destroying, stealing, or stealing from nets, seines, buoys, pots, etc.**

(a) It is unlawful for any person without the authority of the owner of the equipment to take fish from nets, traps, pots, and other devices to catch fish which have been lawfully placed in the open waters of the State.

(b) It is unlawful for any master or other person having the management or control of a vessel in the navigable waters of the State to willfully, wantonly, and unnecessarily do injury to any seine, net or pot which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish except that a net set across a channel may be temporarily moved to accommodate persons engaged in drift netting, provided that no fish are removed and no damage is done to the net moved.

(c) It is unlawful for any person to willfully ~~destroy~~ steal, destroy, or injure any buoys, markers, stakes, nets, pots, or other devices on property lawfully set out in the open waters of the State in connection with any fishing or fishery.

(d) Violation of subsections (a), (b), or (c) is a ~~Class 2 misdemeanor for a first conviction, and a Class 1 misdemeanor for a second or subsequent conviction.~~ Class A1 misdemeanor.

(e) The Department may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action for injunctive relief to restrain a violation or threatened violation of subsections (a), (b), or (c) of this section pursuant to G.S. 113-131. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur and shall be in the name of the State upon the relation of the Secretary. The court, in issuing any final order in any action brought pursuant to this subsection may, in its discretion, award costs of litigation including reasonable attorney and expert-witness fees to any party."

Section 3.8. G.S. 113-277(a3) reads as rewritten:

"(a3) As used in this Article, the term 'conviction' has the same meaning assigned to it in ~~G.S. 113-166(a).~~ G.S. 113-171."

PART IV. FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 4.1. G.S. 75A-5(h) reads as rewritten:

"(h) Each certificate of number awarded pursuant to this Chapter must be renewed on or before the first day of the month next succeeding that during which the same expires; otherwise, such certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the Wildlife Resources Commission and shall be accompanied by a fee of eight dollars ($8.00) for a one-year period or by a fee of twenty dollars ($20.00) for a three-year period; provided, there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing ~~boats~~ vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section."

Section 4.2. G.S. 75A-5.1 reads as rewritten:

"**§ 75A-5.1. Commercial fishing ~~boats;~~ vessels; renewal of number.**

(a) The owner ~~or operator~~ of any commercial fishing ~~boat which is currently licensed for the use of commercial fishing gear shall be entitled to renewal of~~ vessel that is registered under the provisions of ~~G.S. 113-152,~~ G.S. 113-168.6 may renew the certificate of number of ~~such boat~~ the vessel when ~~such~~ the owner has complied with all of the conditions of this section.

(b) ~~For the purpose of this section, commercial fishing boats are defined as vessels which are used primarily for commercial fishing operations, from which operations the owners and/or operators thereof derived more than one half of their gross incomes during the preceding calendar year.~~ As used in this section, 'commercial fishing vessel' is a vessel used in a commercial fishing operation, as defined in G.S. 113-168.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the ~~boat~~ vessel shall submit, and the Wildlife Resources Commission shall require:

(1) The regular application for renewal of the certificate of number of ~~such boat,~~ the vessel, as provided by G.S. 75A-5;

(2) A statement, on a form to be supplied by the Commission, and signed by the applicant, that the ~~boat~~ vessel for which the application for renewal is made is a commercial fishing ~~boat as herein defined;~~ vessel; and

(3) A receipt, signed by an authorized agent of the Department of Environment and Natural Resources, and bearing the number awarded to the boat under the provisions of this Chapter, showing that the commercial fishing ~~boat license tax imposed by G.S. 113-152~~ vessel registration fee imposed by G.S. 113-168.6 has been paid for ~~such boat~~ the vessel for the period during which the application for renewal of the certificate of number is submitted.

(d) Any person who shall willfully give false information upon the application or the statement required by ~~the preceding paragraph,~~ this section or who shall falsify any ~~tax~~ registration fee receipt ~~thereby required,~~ required by this section shall be guilty of a Class 1 misdemeanor."

Section 4.3. G.S. 105-164.13(9) reads as rewritten:

"(9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies to persons for use by them principally in commercial fishing operations within the meaning of ~~G.S. 113-152,~~ G.S. 113-168, except when the property is for use by persons principally to take fish for recreation or personal use or consumption. As used in this subdivision, 'fish' is defined as in G.S. 113-129(7)."

Section 4.4. The title for Article 14 of Chapter 113 of the General Statutes reads as rewritten:

"ARTICLE 14.

"Commercial and Sports Fisheries ~~Licenses and Taxes.~~ Licenses."

Section 4.5. Subsections (d) and (e) of G.S. 113-154.1 read as rewritten:

"(d) Application for Non-Vessel Endorsement. -- An application for issuance or renewal of an endorsement to sell shall be filed with the Morehead City ~~offices~~ office of the Division of Marine Fisheries or license agents authorized to sell licenses under this Article. An application shall be accompanied by the fee established in subsection (b) of this section. Applications shall not be accepted from persons ineligible to hold a license issued by the Marine Fisheries Commission, including any applicant whose endorsement is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the endorsement to sell, until the endorsement issued by the Division is received or the Division determines that the applicant is ineligible to hold an endorsement. In addition to the information required in subsection (c) of this section,

the applicant shall disclose on the application a valid address, and such other information as the Division may require.

(e) Application for Replacement Non-Vessel Endorsement to Sell. -- A replacement endorsement shall only be obtained from the Morehead City ~~offices~~ office of the Division of Marine Fisheries. The Division shall not accept an application for a replacement endorsement unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the endorsement until the replacement license has been received."

Section 4.6. G.S. 113-154.1(h1) reads as rewritten:

"(h1) Transfer of Endorsement to Sell Fish on a Vessel ~~License; Limitation on Use of Endorsement to Sell Fish on a Vessel License by Other Persons.~~ License. -- A valid endorsement to sell fish on a vessel license may be transferred with the vessel license when the vessel license is transferred by the vessel licensee to (i) another vessel purchased by the vessel licensee or (ii) a vessel that is purchased by another person who is otherwise qualified to hold the vessel license and endorsement under this Article. Upon application to the Morehead City office of the Division of Marine Fisheries by a vessel licensee who is eligible to transfer an endorsement to sell fish on a vessel license under this subsection, the Division shall transfer the endorsement to sell fish on the vessel license. ~~It is unlawful to use an endorsement to sell fish on a vessel license issued to another person in the sale or attempted sale of fish or for the holder of an endorsement to sell fish on a vessel license to allow fish to be sold under the endorsement by any other person except that a person:~~

~~(1) Under the age of 16 may sell fish under the endorsement to sell fish on a vessel license of a relative or guardian.~~

~~(2) May sell fish that are taken in a fishing operation in which that person and the holder of the endorsement both participated.~~"

Section 4.7. G.S. 113-154.1(i) is repealed.

Section 4.8. G.S. 113-156(i) is repealed.

Section 4.9. G.S. 113-168 reads as rewritten:

"**§ 113-168. Definitions.**

As used in this Article:

(1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. ~~Commercial fishing operation includes taking people fishing for hire.~~ Commercial fishing operation does not include (i) the taking of fish as part of a recreational fishing tournament, unless commercial fishing equipment or gear is used or (ii) the taking of fish under a RCGL.

(2) 'Commission' means the Marine Fisheries Commission.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(3a) 'Immediate family' means the mother, father, brothers, sisters, spouse, children, stepparents, stepbrothers, stepsisters, and stepchildren of a person.

(4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) 'North Carolina resident' means a person who is a resident within the meaning of G.S. 113-130(4). ~~G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.~~

(6) 'RCGL' means Recreational Commercial Gear License.

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

(8) 'SCFL' means Standard Commercial Fishing License."

Section 4.10. G.S. 113-168.1 reads as rewritten:

"**§ 113-168.1. General provisions ~~for commercial~~ governing licenses and endorsements.**

(a) Duration, Fees. -- Except as provided in G.S. 113-173(f), ~~All~~ all licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license or endorsement shall pay the full annual ~~license~~ fee at the time the applicant applies for the license or endorsement regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without ~~being licensed as~~ holding a license and any endorsements required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) ~~Licenses~~ Licenses, Assignments, and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready at hand for inspection all valid ~~licenses~~ licenses, assignments, and endorsements required under this Article. To comply with this subsection, a person must have any required endorsements and either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) SCFL and an assignment of ~~a~~ the SCFL authorized under this Article. ~~A licensee or assignee shall not~~ It is unlawful for a person to refuse to exhibit ~~the licenses and endorsements~~ any license, assignment, or endorsement required by this Article upon the request of an inspector or ~~any~~ other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, mailing address, physical or residence address, and date of birth of the licensee; the date on which the license is issued; the date on which the

license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

(f) License Issuance and Renewal. -- Except as provided in G.S. 113-173(d), the Division shall issue licenses and endorsements under this Article to eligible applicants at any office of the Division or by mail from the Morehead City office of the Division. A license or endorsement may be renewed in person at any office of the Division or by mail to the Morehead City office of the Division. Eligibility to renew an expired SCFL shall end one year after the date of expiration of the SCFL.

(g) Limitations on Eligibility. -- A person is not eligible to obtain or renew a license or endorsement under this Article if, at the time the person applies for the license or endorsement, any other license or endorsement issued to the person under this Article is suspended or revoked. A person is not eligible to obtain a license or endorsement under this Article if, within the three years prior to the date of application, the person has been determined to be responsible for four or more violations of federal or state laws, regulations, or rules governing the management of marine and estuarine resources. An applicant shall certify that the applicant has not been determined to be responsible for four or more violations of federal or state laws, regulations, or rules governing the management of marine and estuarine resources during the previous three years.

(h) Replacement Licenses and Endorsements. -- The Division shall issue a replacement license, including any endorsements, to a licensee for a license that has not been suspended or revoked. A licensee may apply for a replacement license for a license that has been lost, stolen, or destroyed and shall apply for a replacement license within 30 days of a change in the licensee's name or address. A licensee may apply for a replacement license in person at any office of the Division or by mail to the Morehead City office of the Division. A licensee may use a copy of the application for a replacement license that has been filed with the Division as a temporary license until the licensee receives the replacement license. The Commission may establish a fee for each type of replacement license, not to exceed ten dollars ($10.00), that compensates the Division for the administrative costs associated with issuing the replacement license.

(i) Cancellation. -- The Division may cancel a license or endorsement issued on the basis of an application that contains false information supplied by the applicant. A cancelled license or endorsement is void from the date of issuance. A person in possession of a cancelled license or endorsement shall surrender the cancelled license or endorsement to the Division. It is unlawful to refuse to surrender a cancelled license or endorsement upon demand of any authorized agent of the Division."

Section 4.11. G.S. 113-168.2 reads as rewritten:

"**§ 113-168.2. Standard Commercial Fishing License.**

(a) Requirement. -- ~~No person shall~~ Except as otherwise provided in this Article, it is unlawful for any person to engage in a commercial fishing operation in the coastal fishing waters without holding a ~~Standard Commercial Fishing License~~ SCFL issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds

a valid SCFL ~~or RSCFL~~ is not required to hold a ~~SCFL or RSCFL.~~ SCFL. A person who holds a SCFL is not authorized to take shellfish unless the SCFL is endorsed as provided in G.S. 113-168.5(d) or the person holds a shellfish license issued pursuant to G.S. 113-169.2.

(a1) Use of Vessels. -- The holder of a SCFL is authorized to use only one vessel in a commercial fishing operation at any given time. The Commission may adopt a rule to exempt from this requirement a person in command of a vessel that is auxiliary to a vessel engaged in a pound net operation, long-haul operation, beach seine operation, or menhaden operation.

~~(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.~~

~~(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten dollar ($10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.~~

~~(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application.~~

(e) Fees. -- The annual SCFL fee for a ~~North Carolina~~ resident of this State shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of ~~North Carolina~~ this State shall be eight hundred dollars ($800.00) or the amount charged to a ~~North Carolina~~ resident of this State in the nonresident's state, whichever is less. In no event, however, may the fee be less than two hundred dollars ($200.00). For purposes of this subsection, a 'resident of this State' is a person who is a resident within the meaning of:

(1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or

(2) G.S. 113-130(4)e.

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any ~~individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked.~~ individual who is eligible to hold a SCFL under this Article. ~~If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.~~ The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's ~~name and~~ name, mailing address, physical or residence address, and the duration of the assignment. ~~A notarized copy of the assignment shall be filed with the Division.~~ If a notarized copy of an assignment is not filed with the Morehead City office of the Division within five days of the date of the assignment, the assignment shall expire. ~~The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel.~~ It is unlawful for the assignee of a SCFL to assign the SCFL. The assignment ~~may be revoked by: (i)~~ shall terminate:

(1) Upon written notification by the assignor to the assignee and the Division that the assignment has been ~~terminated; or (ii) a~~ terminated.

(1a) Upon written notification by the estate of the assignor to the assignee and the Division that the assignment has been terminated.

(2) ~~determination by the Division~~ If the Division determines that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(3) If the assignee becomes ineligible to hold a license under this Article.

(4) Upon the death of the assignee.

(5) If the Division suspends or revokes the assigned SCFL.

(6) At the end of the license year.

(g) Transfer. -- A SCFL may be ~~transferred:~~

~~(1) By the license holder to a member of the license holder's immediate family.~~

~~(2) By the State to the estate of the license holder upon the death of the license holder.~~

~~(3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.~~

~~(4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.~~

~~(5) Under any other circumstance authorized by rule of the Commission.~~

transferred only by the Division. A SCFL may be transferred pursuant to rules adopted by the Commission or upon the request of:

(1) A licensee, from the licensee to a member of the licensee's immediate family who is eligible to hold a SCFL under this Article.

(2) The administrator or executor of the estate of a deceased licensee, to the administrator or executor of the estate if a surviving member of the deceased licensee's immediate family is eligible to hold a SCFL under this Article. The administrator or executor must request a transfer under this subdivision within six months after the administrator or executor qualifies under Chapter 28A of the General Statutes. An administrator or executor who holds a SCFL under this subdivision may, for the benefit of the estate of the deceased licensee:

a. Engage in a commercial fishing operation under the SCFL if the administrator or executor is eligible to hold a SCFL under this Article.

b. Assign the SCFL as provided in subsection (f) of this section.

c. Renew the SCFL as provided in G.S. 113-168.1.

(3) An administrator or executor to whom a SCFL was transferred pursuant to subdivision (2) of this subsection, to a surviving member of the deceased licensee's immediate family who is eligible to hold a SCFL under this Article.

(4) The surviving member of the deceased licensee's immediate family to whom a SCFL was transferred pursuant to subdivision (3) of this subsection, to a third-party purchaser of the deceased licensee's fishing vessel.

(5) A licensee who is retiring from commercial fishing, to a third-party purchaser of the licensee's fishing vessel.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid ~~SCFL, RSCFL,~~ SCFL or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the ~~SCFL, RSCFL,~~ SCFL or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction."

Section 4.12. G.S. 113-168.3 reads as rewritten:

"**§ 113-168.3. Retired Standard Commercial Fishing License.**

(a) SCFL Provisions Applicable. -- Except as provided in this section, the provisions set forth in ~~G.S. 113-168.2~~ this Article concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fees. -- Any ~~person~~ individual who is 65 years of age or older and who is ~~otherwise~~ eligible for a SCFL under G.S. 113-168.2 may ~~purchase a~~ apply for either a SCFL or RSCFL. An applicant for a RSCFL shall provide proof of age ~~Proof of age shall be supplied~~ at the time the application is made. The annual fee for a RSCFL for a ~~North Carolina~~ resident of this State shall be one hundred dollars ($100.00). The annual fee for a RSCFL for a person who is not a resident of ~~North Carolina~~ this State shall be eight hundred dollars ($800.00) or the amount charged to a ~~North Carolina~~ resident of this State in the nonresident's state, whichever is less. In no event, however, shall the fee be less than one hundred dollars ($100.00). For purposes of this subsection, a 'resident of this State' is a person who is a resident within the meaning of:

(1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or

(2) G.S. 113-130(4)e.

(c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2. ~~G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of the RSCFL holder's fishing vessel.~~

(1) If the ~~third-party purchaser~~ transferee is less than 65 years of age, ~~that purchaser~~ the transferee holds a SCFL. When the transferee renews the SCFL, the transferee shall pay the fee ~~for the SCFL~~ set ~~forth~~ out in G.S. 113-168.2.

(2) If the transferee is 65 years of age or older, the transferee may elect to hold either a SCFL or RSCFL. If the transferee elects to hold a SCFL, the transferee shall pay the fee set out in G.S. 113-168.2. If the transferee elects to hold a RSCFL, the transferee shall pay the fee set out in this section.

(d) Assignment. -- The RSCFL shall not be assignable."

Section 4.13. G.S. 113-168.4 reads as rewritten:

"**§ 113-168.4. ~~Regulations concerning the sale~~ Sale of fish.**

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange these fish for anything of value ~~for merchandise these fish, without holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2.~~ without holding a license required to sell the type of fish being offered. ~~It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.~~

(b) It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) A person who organizes a ~~nonprofit~~ recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a ~~nonprofit~~ recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars ($100.00). It is unlawful for any person licensed under this subsection to sell fish to any person other than a fish dealer licensed under G.S. 113-169.3 unless the seller is also a licensed fish dealer. A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. ~~Proceeds derived~~ Gross proceeds from the sale of fish may be used only for ~~charitable purposes.~~ charitable, religious, educational, civic, or conservation purposes and shall not be used to pay tournament expenses."

Section 4.14. G.S. 113-168.5 reads as rewritten:

"**§ 113-168.5. License endorsements for Standard Commercial Fishing ~~License and Retired Standard Commercial Fishing~~ License.**

~~(a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.~~

~~(b) Vessel Endorsements. —~~

~~(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:~~

~~a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;~~

~~b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or~~

~~c. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.~~

~~(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. No endorsement is required, however, for a vessel of any length that does not have a~~

~~motor if the vessel is used only in connection with another vessel for which the required license has been properly endorsed.~~

~~(3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:~~

~~a. One dollar ($1.00) per foot for a vessel not over 18 feet in length.~~

~~b. One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.~~

~~c. Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.~~

~~d. Six dollars ($6.00) per foot for a vessel over 50 feet in length.~~

~~(4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).~~

~~(5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL, RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.~~

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in ~~the~~ coastal fishing ~~waters of the State,~~ waters, to land menhaden taken by purse seine, ~~in the State,~~ or to sell menhaden ~~from a vessel in the State~~ taken by purse seine without obtaining a menhaden endorsement of a ~~SCFL or RSCFL.~~ SCFL. The fee for a menhaden endorsement shall be two dollars ($2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a

change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Division shall issue a shellfish endorsement of a SCFL ~~or RSCFL~~ to a North Carolina resident at no charge. The holder of a SCFL with a shellfish endorsement is authorized to take and sell shellfish."

Section 4.15. Article 14A of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-168.6. Commercial fishing vessel registration.**

(a) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:

(1) A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;

(2) A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or

(3) A certification of documentation has been issued for the vessel that lists a home port in the State under 46 U.S.C. § 12101, et seq., as amended.

(b) The owner of a vessel used in a commercial fishing operation in the coastal fishing waters of the State or a North Carolina vessel used to land or sell fish in the State shall register the vessel with the Division. It is unlawful to use a vessel that is not registered with the Division in a commercial fishing operation in the coastal fishing waters of the State. It is unlawful to use a North Carolina vessel that is not registered with the Division to land or sell fish in the State. No registration is required for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel that is properly registered.

(c) The annual fee for a commercial fishing vessel registration shall be determined by the length of the vessel and shall be in addition to the fee for other licenses issued under this Article. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The annual fee for a commercial fishing vessel registration is:

(1) One dollar ($1.00) per foot for a vessel not over 18 feet in length.

(2) One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.

(3) Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.

(4) Six dollars ($6.00) per foot for a vessel over 50 feet in length.

(d) A vessel may be registered at any office of the Division. A commercial fishing vessel registration expires on the last day of the license year.

(e) Within 30 days of the date on which the owner of a registered vessel transfers ownership of the vessel, the new owner of the vessel shall notify the Division of the change in ownership and apply for a replacement commercial fishing vessel registration. An application for a replacement commercial fishing vessel registration

shall be accompanied by proof of the transfer of the vessel. The provisions of G.S. 113-168.1(h) apply to a replacement commercial fishing vessel registration."

Section 4.16. G.S. 113-169 reads as rewritten:

"**§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

A person who is not a ~~resident of North Carolina,~~ North Carolina resident, who is not eligible for a SCFL under this Article, and who only seeks to engage in ~~menhaden fishing~~ a commercial fishing operation for the harvest and sale of menhaden is eligible to ~~purchase~~ obtain a menhaden license for nonresidents. The fee for the menhaden license for nonresidents shall be two dollars ($2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The menhaden license for nonresidents shall be required for the mother ship to take, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden license for nonresidents must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation for the harvest and sale of menhaden under the direction of a person who holds a valid menhaden license for nonresidents is not required to hold a menhaden license for nonresidents or a SCFL."

Section 4.17. G.S. 113-169.2 reads as rewritten:

"**§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

(a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public or private grounds of the State by mechanical means or ~~for commercial use~~ in quantities greater than the personal use limits set forth in subsection (i) of this section by any means without holding either a shellfish license or a shellfish endorsement of a ~~SCFL or RSCFL.~~ SCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to ~~purchase~~ obtain a shellfish license without holding a ~~SCFL or RSCFL.~~ SCFL. ~~The license includes the privilege~~ The shellfish license authorizes the licensee to sell ~~shellfish to a licensed fish dealer.~~ shellfish.

~~(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City Office. Any person who is issued a shellfish license is eligible to renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.~~

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a ~~resident of North Carolina.~~ North Carolina resident.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish ~~for commercial use~~ in quantities greater than the personal use limits set forth in subsection (i) of this section from the public or private grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address.

It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

~~(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.~~

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Exemption. -- Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's or guardian's shellfish license.

(i) Taking Shellfish Without a License for Personal Use. --

(1) A person may take shellfish for personal use without obtaining a license under this section in quantities up to:
   a. One bushel of oysters per day.
   b. One-half bushel of scallops per day.
   c. One hundred clams per day.
   d. Ten conchs per day.
   e. One hundred mussels per day.

(2) Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:
   a. Two bushels of oysters per day.
   b. One bushel of scallops per day.
   c. Two hundred clams per day.
   d. Twenty conchs per day.
   e. Two hundred mussels per day."

Section 4.18. G.S. 113-169.3 reads as rewritten:

"**§ 113-169.3. Licenses for fish dealers.**

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application ~~in the Morehead City Office~~ at any office of the Division together with all license fees including the total number of dealer categories

set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section. Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this ~~article:~~ Article:

(1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;

(2) To sell fish to the public; or

(3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

~~Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section.~~

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or

official agency to sell fish taken or processed in connection with research or demonstration projects;

(2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;

(3) The fish are shipped to a person by a dealer from without the State;

(4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or

(5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars ($50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in oysters: $50.00;

(2) Dealing in scallops: $50.00;

(3) Dealing in clams: $50.00;

(4) Dealing in hard or soft crabs: $50.00;

(5) Dealing in shrimp, including bait: $50.00;

(6) Dealing in finfish, including bait: $50.00;

(7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: $50.00; or

(8) Consolidated license (all categories): $300.00.

(f1) Other License Categories. -- Any person subject to fish dealer licensing requirements who deals in fish not included in the ~~above~~ categories listed in subsection (f) of this section shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this ~~subsection.~~ section. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

~~(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location, expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.~~

(h) ~~Application for~~ Replacement License. -- ~~A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.~~ If the licensee fails to comply with the requirements of G.S. 113-168.1(h), the license is revoked.

(i) Unlawful Purchase and Sale of Fish. -- It is unlawful for a fish dealer to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.

It is unlawful for a fish dealer to buy or accept fish ~~unless the~~ unless, at the time of the transaction:

(1) The seller or donor ~~possesses~~ presents a current and valid ~~SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(e),~~ license to sell the type of fish being offered;

(2) The seller or donor presents the commercial fishing vessel registration of the vessel that was used to take the fish being offered; and ~~the~~

(3) The dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i).

~~It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.~~

(j) Transfer Prohibited. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section."

Section 4.19. G.S. 113-169.4(b) reads as rewritten:

"(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license ~~from the Division. The replacement license is issued without charge.~~ as provided in G.S. 113-168.1(h)."

Section 4.20. G.S. 113-170.1 reads as rewritten:

"**§ 113-170.1. Nonresidents reciprocal agreements.**

Persons who are not North Carolina residents are not ~~entitled~~ eligible to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are ~~entitled to~~ eligible to hold North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions."

Section 4.21. G.S. 113-173 reads as rewritten:

"**§ 113-173. Recreational Commercial Gear License.**

(a) License Required. -- Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational

~~quotas or~~ possession limits. It is unlawful for any person licensed under this section or fishing under a RCGL to possess fish in excess of recreational possession limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (j) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- ~~Upon receipt of a proper application and a two-dollar ($2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.~~ The provisions of G.S 113-168.1(h) apply to this section.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person

has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons.

(4) A person using nonmechanical means may take shellfish for personal use within the limits specified in G.S. 113-169.2(i) without holding a RCGL."

Section 4.22. G.S. 113-223 reads as rewritten:

"**§ 113-223. Reciprocal agreements by Department generally.**

Subject to the specific provisions of ~~G.S. 113-153~~ G.S. 113-169.5 and ~~G.S. 113-161~~ G.S. 113-170.1 relating to reciprocal provisions as to landing and selling catch and as to licenses, the Department is empowered to make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter. Pursuant to such agreements the Department may modify provisions of this Subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of marine and estuarine resources."

Section 4.23. Article 19A of Chapter 113 of the General Statutes reads as rewritten:

"ARTICLE 19A.

"~~South Atlantic~~ Fishery Management ~~Council.~~ Councils.

"**§ 113-259. North Carolina members of the South Atlantic Fishery Management Council.**

(a) In pursuance of Section 302 of the ~~Magnuson~~ Magnuson-Stevens Fishery Conservation and Management Act, 16 ~~United States Code~~ U.S.C. § 1801 ~~et seq.,~~ , et seq., there shall be at least two members of the South Atlantic Fishery Management Council from the State of North Carolina.

(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the State, which official is the Director of the Division of Marine Fisheries of the Department or his designee.

(c) Pursuant to the enabling legislation, other members from the State of North Carolina are selected by the United States Secretary of Commerce from a list of qualified individuals submitted by the Governor of the State. The list of nominees shall be compiled by the Marine Fisheries Commission and must be comprised of individuals who are knowledgeable and experienced with regard to the management,

conservation, or commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward of the ~~States~~ states of North Carolina, South Carolina, Georgia, and Florida. Prior to submission of the list of nominees, the Governor may consult with the Commission regarding additions to the list of nominees to be submitted. Should it be necessary for the Governor to submit additional nominees, the list of nominees shall be compiled by the Marine Fisheries Commission.

"§ 113-260. North Carolina members of the Mid-Atlantic Fishery Management Council.

(a) In pursuance of Section 302 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., there shall be at least two members of the Mid-Atlantic Fishery Management Council from the State of North Carolina.

(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the State, which official is the Director of the Division of Marine Fisheries of the Department or his designee.

(c) Pursuant to the enabling legislation, other members from the State of North Carolina are selected by the United States Secretary of Commerce from a list of qualified individuals submitted by the Governor of the State. The list of nominees shall be compiled by the Marine Fisheries Commission and must be comprised of individuals who are knowledgeable and experienced with regard to the management, conservation, or commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward of the states of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina. Prior to submission of the list of nominees, the Governor may consult with the Commission regarding additions to the list of nominees to be submitted. Should it be necessary for the Governor to submit additional nominees, the list of nominees shall be compiled by the Marine Fisheries Commission."

Section 4.24. Section 5.2 of S.L. 1997-400 reads as rewritten:

"Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this Part and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256; Section 3 of S.L. 1997-347; and Section 6.1 of this act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish that establish eligibility for a SCFL under

subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that ~~are renewed.~~ were issued plus the number of SCFLs that were renewed during the previous license year. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel license on ~~1 July~~ 30 June 1999 is eligible to receive a SCFL. Any person who holds a valid nonvessel endorsement to sell fish, other than a nonvessel endorsement to sell fish issued for an aquaculture operation or a fishing tournament, on 30 June 1999 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire ~~1 July~~ 30 June 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria ~~for~~ to be used by the SCFL Eligibility Board in determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal fishing and protection of the environment; and any other factors the Commission determines to be relevant. The

~~Division~~ SCFL Eligibility Board shall review each application for a SCFL that ~~it~~ the Division receives during the application period to determine whether the applicant is eligible for a SCFL under the eligibility criteria established by the Commission. The Division shall issue SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

(i) SCFL Eligibility Board. There is established a SCFL Eligibility Board. The Board shall apply the eligibility criteria adopted by the Commission to determine whether an applicant for a SCFL is eligible for a SCFL under subsection (h) of this section. The Board shall consist of the Secretary of Environment and Natural Resources or the Secretary's designee, the Fisheries Director or the Director's designee, and the Chair of the Commission or the Chair's designee. The Secretary shall designate one member of the Board to serve as Chair of the Board. The Commission shall adopt rules to govern the operation of the Board. The Board is exempt from the provisions of Article 3 of Chapter 150B of the General Statutes. Decisions of the Board shall be subject to judicial review under the provisions of Article 4 of Chapter 150B of the General Statutes."

PART V. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 5.1. Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 5.2. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 5.3. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 5.4. Sections 1.3, 1.5, 2.1, 3.2, 3.6, 4.4, 4.5, 4.23, 5.1, 5.2, 5.3, and 5.4 of this act are effective when this act becomes law. Sections 3.5 and 3.7 of this act become effective December 1, 1998, and apply to offenses committed on or after that date. Sections 1.4, 3.3, 3.4, 3.8, 4.1, 4.2, 4.3, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, and 4.24 become effective July 1, 1999. Section 4.6 is effective retroactively to August 14, 1997. Sections 1.1, 1.2, 1.6, 1.7, 3.1, 4.7, and 4.8 are effective retroactively to September 1, 1997. Section 4.15 expires September 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1448*
Committee Substitute Favorable 7/29/98

Short Title: 1998 Marine Fisheries Amendments. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED MARINE FISHERIES LAWS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

PART I. MARINE FISHERIES COMMISSION

Section 1.1. G.S. 113-128(5a) reads as rewritten:

"(5a) Marine Fisheries Commission. -- The Marine Fisheries Commission of the Department as established by ~~Part 5A~~ Part 5D of Article 7 of Chapter 143B of the General Statutes."

Section 1.2. G.S. 120-123(53) reads as rewritten:

"(53) The North Carolina Marine Fisheries Commission as established by ~~G.S. 143B-289.5.~~ G.S. 143B-289.51."

Section 1.3. G.S. 143B-289.52(b)(3) reads as rewritten:

"(3) To govern all license requirements ~~and taxes~~ prescribed in Article 14 of Chapter 113 of the General Statutes."

Section 1.4. G.S. 143B-289.52 is amended by adding a new subsection to read:

"(d1) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the harvest or landing of fish in the fishery. If the Commission regulates participation in

a fishery under this subsection, the Division may issue a license to participate in the fishery to a person who:

(1) Held a valid license issued by the Division to harvest, land, or sell fish during at least two of the three license years immediately preceding the date adopted by the Commission to determine participation in the fishery and

(2) Participated in the fishery during at least two of those license years by landing in the State at least the minimum number of pounds of fish adopted by the Commission to determine participation in the fishery."

Section 1.5. G.S. 143B-289.52(e) reads as rewritten:

"(e) The Commission may adopt rules to implement or comply with a ~~fisheries~~ fishery management plan adopted by the Atlantic States Marine Fisheries Commission or ~~an interstate fisheries management council.~~ adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a ~~fisheries~~ fishery management plan ~~by the Atlantic States Marine Fisheries Council [Commission] or an interstate fisheries management council.~~ or the notification of a change in management measures needed to remain in compliance with a fishery management plan."

Section 1.6. G.S. 143B-289.54(c) reads as rewritten:

"(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission. The Governor shall make appointments to the Commission consistent with the restrictions of G.S. 113-200(g)."

Section 1.7. G.S. 143B-289.54(h) reads as rewritten:

"(h) Removal. -- The Governor may remove, as provided in ~~G.S. 143-13,~~ G.S. 143B-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance."

PART II. FISHERY MANAGEMENT PLANS

Section 2.1. G.S. 113-182.1 reads as rewritten:

"**§ 113-182.1. (Effective July 1, 1998) Fishery Management Plans.**

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.22.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be

designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint ~~an Advisory Council.~~ a fishery management plan advisory committee. Each ~~Advisory Council~~ fishery management plan advisory committee shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a ~~Fisheries~~ Fishery Management Plan, once adopted, without the approval of the Secretary of Environment and Natural Resources.

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall concurrently review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(f) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes.

(g) To achieve optimal yield under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that optimal yield cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

(1) Current participation in and dependence on the fishery.
(2) Past fishing practices in the fishery.
(3) Economics of the fishery.
(4) Capability of fishing vessels used in the fishery to engage in other fisheries.
(5) Cultural and social factors relevant to the fishery and any affected fishing communities.
(6) Capacity of the fishery to support biological parameters.
(7) Equitable resolution of competing social and economic interests.
(8) Any other relevant considerations."

PART III. MARINE FISHERIES LAW ENFORCEMENT

Section 3.1. G.S. 113-136(b) reads as rewritten:

"(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part ~~5A~~ 5D of Article 7 of Chapter 143B of the General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources."

Section 3.2. G.S. 113-136(g) reads as rewritten:

"(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting ~~taxable~~ seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable license, ~~tax~~ receipts, permits, bills of lading, or other identification required to accompany such seafood products."

Section 3.3. G.S. 113-184(a) reads as rewritten:

"(a) It is unlawful to carry aboard any vessel subject to licensing requirements under ~~Article 14~~ Article 14A under way or at anchor in coastal fishing waters during the regular closed oyster season any scoops, scrapes, dredges, or winders such as are

usually or can be used for taking oysters. Provided that when such vessels are engaged in lawfully permitted oyster harvesting operations on any privately held shellfish bottom lease under G.S. 113-202 or G.S. 113-205, the vessel shall be exempt from this requirement."

Section 3.4. G.S. 113-185(a) reads as rewritten:

"(a) It is unlawful to fish in the ocean from vessels or with a net within 750 feet of an ocean pier licensed in accordance with ~~G.S. 113-156.1.~~ G.S. 113-169.4. The prohibition shall be effective when:

(1) Buoys or beach markers, placed at the owner's expense in accordance with the rules adopted by the Marine Fisheries Commission, indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier, and

(2) The public is allowed to fish from the pier for a reasonable fee.

The prohibition shall not apply to littoral proprietors whose property is within 750 feet of a duly licensed ocean pier."

Section 3.5. G.S. 113-208(a) reads as rewritten:

"(a) It is unlawful for any person, other than the holder of private shellfish rights, to take or attempt to take shellfish from any privately leased, franchised, or deeded shellfish bottom area without written authorization of the holder and with actual knowledge it is a private shellfish bottom area. Actual knowledge will be presumed when the shellfish are taken or attempted to be taken:

(1) From within the confines of posted boundaries of the area as identified by signs, whether the whole or any part of the area is posted, or

(2) When the area has been regularly posted and identified and the person knew the area to be the subject of private shellfish rights.

A violation of this section shall constitute a ~~Class 2~~ Class A1 misdemeanor, which may include a fine of not more than five thousand dollars ($5,000). The written authorization shall include the lease number or deed reference, name and address of authorized person, date of issuance, and date of expiration, and it must be signed by the holder of the private shellfish right. Identification signs shall include the lease number or deed reference and the name of the holder."

Section 3.6. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries

resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. ~~The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation.~~ It is a defense to an enforcement action for a violation of a proclamation that a licensee was prevented from receiving notice of the proclamation due to a natural disaster or other act of God occasioned exclusively by violence of nature without interference of any human agency and that could not have been prevented or avoided by the exercise of due care or foresight."

Section 3.7. G.S. 113-268 reads as rewritten:

"**§ 113-268. ~~Robbing or injuring~~ Injuring, destroying, stealing, or stealing from nets, seines, buoys, pots, etc.**

(a) It is unlawful for any person without the authority of the owner of the equipment to take fish from nets, traps, pots, and other devices to catch fish which have been lawfully placed in the open waters of the State.

(b) It is unlawful for any master or other person having the management or control of a vessel in the navigable waters of the State to willfully, wantonly, and unnecessarily do injury to any seine, net or pot which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish except that a net set across a channel may be temporarily moved to accommodate persons engaged in drift netting, provided that no fish are removed and no damage is done to the net moved.

(c) It is unlawful for any person to willfully ~~destroy~~ steal, destroy, or injure any buoys, markers, stakes, nets, pots, or other devices on property lawfully set out in the open waters of the State in connection with any fishing or fishery.

(d) Violation of subsections (a), (b), or (c) is a ~~Class 2 misdemeanor for a first conviction, and a Class 1 misdemeanor for a second or subsequent conviction.~~ Class A1 misdemeanor.

(e) The Department may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action for injunctive relief to

restrain a violation or threatened violation of subsections (a), (b), or (c) of this section pursuant to G.S. 113-131. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur and shall be in the name of the State upon the relation of the Secretary. The court, in issuing any final order in any action brought pursuant to this subsection may, in its discretion, award costs of litigation including reasonable attorney and expert-witness fees to any party."

Section 3.8. G.S. 113-277(a3) reads as rewritten:

"(a3) As used in this Article, the term 'conviction' has the same meaning assigned to it in ~~G.S. 113-166(a).~~ G.S. 113-171."

PART IV. FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 4.1. G.S. 75A-5(h) reads as rewritten:

"(h) Each certificate of number awarded pursuant to this Chapter must be renewed on or before the first day of the month next succeeding that during which the same expires; otherwise, such certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the Wildlife Resources Commission and shall be accompanied by a fee of eight dollars ($8.00) for a one-year period or by a fee of twenty dollars ($20.00) for a three-year period; provided, there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing ~~boats~~ vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section."

Section 4.2. G.S. 75A-5.1 reads as rewritten:

"**§ 75A-5.1. Commercial fishing ~~boats;~~ vessels; renewal of number.**

(a) The owner ~~or operator~~ of any commercial fishing ~~boat which is currently licensed for the use of commercial fishing gear shall be entitled to renewal of~~ vessel that is registered under the provisions of ~~G.S. 113-152,~~ G.S. 113-168.6 may renew the certificate of number of ~~such boat~~ the vessel when ~~such~~ the owner has complied with all of the conditions of this section.

(b) ~~For the purpose of this section, commercial fishing boats are defined as vessels which are used primarily for commercial fishing operations, from which operations the owners and/or operators thereof derived more than one half of their gross incomes during the preceding calendar year.~~ As used in this section, 'commercial fishing vessel' is a vessel used in a commercial fishing operation, as defined in G.S. 113-168.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the ~~boat~~ vessel shall submit, and the Wildlife Resources Commission shall require:

(1) The regular application for renewal of the certificate of number of ~~such boat,~~ the vessel, as provided by G.S. 75A-5;

(2) A statement, on a form to be supplied by the Commission, and signed by the applicant, that the ~~boat~~ vessel for which the

application for renewal is made is a commercial fishing ~~boat as herein defined;~~ vessel; and

(3) A receipt, signed by an authorized agent of the Department of Environment and Natural Resources, and bearing the number awarded to the boat under the provisions of this Chapter, showing that the commercial fishing ~~boat license tax imposed by G.S. 113-152~~ vessel registration fee imposed by G.S. 113-168.6 has been paid for ~~such boat~~ the vessel for the period during which the application for renewal of the certificate of number is submitted.

(d) Any person who shall willfully give false information upon the application or the statement required by ~~the preceding paragraph,~~ this section or who shall falsify any ~~tax~~ registration fee receipt ~~thereby required,~~ required by this section shall be guilty of a Class 1 misdemeanor."

Section 4.3. G.S. 105-164.13(9) reads as rewritten:

"(9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies to persons for use by them principally in commercial fishing operations within the meaning of ~~G.S. 113-152,~~ G.S. 113-168, except when the property is for use by persons principally to take fish for recreation or personal use or consumption. As used in this subdivision, 'fish' is defined as in G.S. 113-129(7)."

Section 4.4. The catch line for Article 14 of Chapter 113 of the General Statutes reads as rewritten:

"ARTICLE 14.

Commercial and Sports Fisheries ~~Licenses and Taxes.~~ Licenses."

Section 4.5. Subsections (d) and (e) of G.S. 113-154.1 read as rewritten:

"(d) Application for Non-Vessel Endorsement. -- An application for issuance or renewal of an endorsement to sell shall be filed with the Morehead City ~~offices~~ office of the Division of Marine Fisheries or license agents authorized to sell licenses under this Article. An application shall be accompanied by the fee established in subsection (b) of this section. Applications shall not be accepted from persons ineligible to hold a license issued by the Marine Fisheries Commission, including any applicant whose endorsement is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the endorsement to sell, until the endorsement issued by the Division is received or the Division determines that the applicant is ineligible to hold an endorsement. In addition to the information required in subsection (c) of this section, the applicant shall disclose on the application a valid address, and such other information as the Division may require.

(e) Application for Replacement Non-Vessel Endorsement to Sell. -- A replacement endorsement shall only be obtained from the Morehead City ~~offices~~ office of the Division of Marine Fisheries. The Division shall not accept an application for a replacement endorsement unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an

application duly filed with the Division shall serve as the endorsement until the replacement license has been received."

Section 4.6. G.S. 113-154.1(h1) reads as rewritten:

"(h1) Transfer of Endorsement to Sell Fish on a Vessel ~~License; Limitation on Use of Endorsement to Sell Fish on a Vessel License by Other Persons.~~ License. -- A valid endorsement to sell fish on a vessel license may be transferred with the vessel license when the vessel license is transferred by the vessel licensee to (i) another vessel purchased by the vessel licensee or (ii) a vessel that is purchased by another person who is otherwise qualified to hold the vessel license and endorsement under this Article. Upon application to the Morehead City office of the Division of Marine Fisheries by a vessel licensee who is eligible to transfer an endorsement to sell fish on a vessel license under this subsection, the Division shall transfer the endorsement to sell fish on the vessel license. ~~It is unlawful to use an endorsement to sell fish on a vessel license issued to another person in the sale or attempted sale of fish or for the holder of an endorsement to sell fish on a vessel license to allow fish to be sold under the endorsement by any other person except that a person:~~

~~(1) Under the age of 16 may sell fish under the endorsement to sell fish on a vessel license of a relative or guardian.~~

~~(2) May sell fish that are taken in a fishing operation in which that person and the holder of the endorsement both participated.~~"

Section 4.7. G.S. 113-154.1(i) is repealed.

Section 4.8. G.S. 113-156(i) is repealed.

Section 4.9. G.S. 113-168 reads as rewritten:

"**§ 113-168. Definitions.**

As used in this Article:

(1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. ~~Commercial fishing operation includes taking people fishing for hire.~~ Commercial fishing operation does not include (i) the taking of fish as part of a recreational fishing tournament, unless commercial fishing equipment or gear is used or (ii) the taking of fish under a RCGL.

(2) 'Commission' means the Marine Fisheries Commission.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(3a) 'Immediate family' means the mother, father, brothers, sisters, spouse, children, stepparents, stepbrothers, stepsisters, and stepchildren of a person.

(4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) 'North Carolina resident' means a person who is a resident within the meaning of G.S. 113-130(4). ~~G.S. 113-130(4) and who filed a~~

~~State income tax return as a resident of the State for the previous calendar or tax year.~~

(6) 'RCGL' means Recreational Commercial Gear License.

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

(8) 'SCFL' means Standard Commercial Fishing License."

Section 4.10. G.S. 113-168.1 reads as rewritten:

"**§ 113-168.1. General provisions ~~for commercial~~ governing licenses and endorsements.**

(a) Duration, Fees. -- Except as provided in G.S. 113-173(f), ~~All~~ all licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license or endorsement shall pay the full annual ~~license~~ fee at the time the applicant applies for the license or endorsement regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without ~~being licensed as~~ holding a license and any endorsements required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) ~~Licenses~~ Licenses, Assignments, and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready at hand for inspection all valid ~~licenses~~ licenses, assignments, and endorsements required under this Article. To comply with this subsection, a person must have any required endorsements and either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) SCFL and an assignment of ~~a~~ the SCFL authorized under this Article. ~~A licensee or assignee shall not~~ It is unlawful for a person to refuse to exhibit ~~the licenses and endorsements~~ any license, assignment, or endorsement required by this Article upon the request of an inspector or ~~any~~ other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, mailing address, physical or residence address, and date of birth of the licensee; the date on which the license is issued; the date on which the license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

(f) License Issuance and Renewal. -- Except as provided in G.S. 113-173(d), the Division shall issue licenses and endorsements under this Article to eligible applicants at any office of the Division or by mail from the Morehead City office of the Division. A license or endorsement may be renewed in person at any office of the Division or by mail to the Morehead City office of the Division. Eligibility to renew an expired SCFL shall end one year after the date of expiration of the SCFL.

(g) Limitations on Eligibility. -- A person is not eligible to obtain or renew a license or endorsement under this Article if, at the time the person applies for the license or endorsement, any other license or endorsement issued to the person under this Article is suspended or revoked. A person is not eligible to obtain a license or endorsement under this Article if, within the three years prior to the date of application, the person has been determined to be responsible for four or more violations of federal or state laws, regulations, or rules governing the management of marine and estuarine resources. An applicant shall certify that the applicant has not been determined to be responsible for four or more violations of federal or state laws, regulations, or rules governing the management of marine and estuarine resources during the previous three years.

(h) Replacement Licenses and Endorsements. -- The Division shall issue a replacement license, including any endorsements, to a licensee for a license that has been lost, stolen, or destroyed and that has not been suspended or revoked. To obtain a replacement license, a licensee shall pay a replacement fee of ten dollars ($10.00). A licensee may apply for a replacement license in person at any office of the Division or by mail to the Morehead City office of the Division. A licensee may use a copy of the application for a replacement license that has been filed with the Division as a temporary license until the licensee receives the replacement license.

(i) Cancellation. -- The Division may cancel a license or endorsement issued on the basis of a license application that contains false information supplied by the applicant. A cancelled license or endorsement is void from the date of issuance. A person in possession of a cancelled license or endorsement shall surrender the cancelled license or endorsement to the Division. It is unlawful to refuse to surrender a cancelled license or endorsement upon demand of any authorized agent of the Division."

Section 4.11. G.S. 113-168.2 reads as rewritten:

"**§ 113-168.2. Standard Commercial Fishing License.**

(a) Requirement. -- ~~No person shall~~ Except as otherwise provided in this Article, it is unlawful for any person to engage in a commercial fishing operation in the coastal fishing waters without holding a ~~Standard Commercial Fishing License~~ SCFL issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL ~~or RSCFL~~ is not required to hold a ~~SCFL or RSCFL.~~ SCFL. A person who holds a SCFL is not authorized to take shellfish unless the SCFL is endorsed as provided in G.S. 113-168.5(d) or the person holds a shellfish license issued pursuant to G.S. 113-169.2.

(a1) Use of Vessels. -- The holder of a SCFL is authorized to use only one vessel in a commercial fishing operation at any given time. The Commission may adopt a rule to exempt from this requirement a person in command of a vessel that is auxiliary to a vessel engaged in a pound net operation, long-haul operation, beach seine operation, or menhaden operation.

~~(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a~~

~~completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.~~

~~(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten-dollar ($10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.~~

~~(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application.~~

(e) Fees. -- The annual SCFL fee for a ~~North Carolina~~ resident of this State shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of ~~North Carolina~~ this State shall be eight hundred dollars ($800.00) or the amount charged to a ~~North Carolina~~ resident of this State in the nonresident's state, whichever is less. In no event, however, may the fee be less than two hundred dollars ($200.00). For purposes of this subsection, a 'resident of this State' is a person who is a resident within the meaning of:

(1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or

(2) G.S. 113-130(4)e.

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any ~~individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked.~~ individual who is eligible to hold a SCFL under this Article. ~~If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.~~ The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's ~~name and~~ name, mailing address, physical or residence address, and the duration of the assignment. ~~A notarized copy of the assignment shall be filed with the Division.~~ If a notarized copy of an assignment is not filed with the Morehead City office of the Division within five

days of the date of the assignment, the assignment shall expire. ~~The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel.~~ It is unlawful for the assignee of a SCFL to assign the SCFL. The assignment ~~may be revoked by: (i)~~ shall terminate:

(1) Upon written notification by the assignor to the assignee and the Division that the assignment has been ~~terminated; or (ii) a~~ terminated.

(1a) Upon written notification by the estate of the assignor to the assignee and the Division that the assignment has been terminated.

(2) ~~determination by the Division~~ If the Division determines that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(3) If the assignee becomes ineligible to hold a license under this Article.

(4) Upon the death of the assignee.

(5) If the Division suspends or revokes the assigned SCFL.

(6) At the end of the license year.

(g) Transfer. -- A SCFL may be ~~transferred:~~

~~(1) By the license holder to a member of the license holder's immediate family.~~

~~(2) By the State to the estate of the license holder upon the death of the license holder.~~

~~(3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.~~

~~(4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.~~

~~(5) Under any other circumstance authorized by rule of the Commission.~~

transferred only by the Division. A SCFL may be transferred pursuant to rules adopted by the Commission or upon the request of:

(1) A licensee, from the licensee to a member of the licensee's immediate family who is eligible to hold a SCFL under this Article.

(2) The administrator or executor of the estate of a deceased licensee, to the administrator or executor of the estate if a surviving member of the deceased licensee's immediate family is eligible to hold a SCFL under this Article. The administrator or executor must request a transfer under this subdivision within six months after the administrator or executor qualifies under Chapter 28A of the General Statutes. An administrator or executor who holds a SCFL

under this subdivision may, for the benefit of the estate of the deceased licensee:

a. Engage in a commercial fishing operation under the SCFL if the administrator or executor is eligible to hold a SCFL under this Article.

b. Assign the SCFL as provided in subsection (f) of this section.

c. Renew the SCFL as provided in G.S. 113-168.1.

(3) An administrator or executor to whom a SCFL was transferred pursuant to subdivision (2) of this subsection, to a surviving member of the deceased licensee's immediate family who is eligible to hold a SCFL under this Article.

(4) The surviving member of the deceased licensee's immediate family to whom a SCFL was transferred pursuant to subdivision (3) of this subsection, to a third-party purchaser of the deceased licensee's fishing vessel.

(5) A licensee who is retiring from commercial fishing, to a third-party purchaser of the licensee's fishing vessel.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid ~~SCFL, RSCFL,~~ SCFL or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the ~~SCFL, RSCFL,~~ SCFL or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction."

Section 4.12. G.S. 113-168.3 reads as rewritten:

"**§ 113-168.3. Retired Standard Commercial Fishing License.**

(a) SCFL Provisions Applicable. -- Except as provided in this section, the provisions set forth in ~~G.S. 113-168.2~~ this Article concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fees. -- Any ~~person~~ individual who is 65 years of age or older and who is ~~otherwise~~ eligible for a SCFL under G.S. 113-168.2 may ~~purchase a~~ apply for either a SCFL or RSCFL. An applicant for a RSCFL shall provide proof of age ~~Proof of age shall be supplied~~ at the time the application is made. The annual fee for a RSCFL for a ~~North Carolina~~ resident of this State shall be one hundred dollars ($100.00). The annual fee for a RSCFL for a person who is not a resident of ~~North Carolina~~ this State shall be eight hundred dollars ($800.00) or the amount charged to a ~~North Carolina~~ resident of this State in the nonresident's state, whichever is less. In no event, however, shall the fee be less than one hundred dollars ($100.00). For

purposes of this subsection, a 'resident of this State' is a person who is a resident within the meaning of:

(1) Sub-subdivisions a. through d. of G.S. 113-130(4) and who filed a State income tax return as a resident of North Carolina for the previous calendar or tax year, or

(2) G.S. 113-130(4)e.

(c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2. ~~G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of the RSCFL holder's fishing vessel.~~

(1) If the ~~third-party purchaser~~ transferee is less than 65 years of age, ~~that purchaser~~ the transferee holds a SCFL. When the transferee renews the SCFL, the transferee shall pay the fee ~~for the SCFL~~ set ~~forth~~ out in G.S. 113-168.2.

(2) If the transferee is 65 years of age or older, the transferee may elect to hold either a SCFL or RSCFL. If the transferee elects to hold a SCFL, the transferee shall pay the fee set out in G.S. 113-168.2. If the transferee elects to hold a RSCFL, the transferee shall pay the fee set out in this section.

(d) Assignment. -- The RSCFL shall not be assignable."

Section 4.13. G.S. 113-168.4 reads as rewritten:

"**§ 113-168.4. ~~Regulations concerning the sale~~ Sale of fish.**

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange these fish for anything of value ~~for merchandise these fish, without holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2.~~ without holding a license required to sell the type of fish being offered. ~~It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.~~

(b) It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) A person who organizes a ~~nonprofit~~ recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a ~~nonprofit~~ recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars ($100.00). It is unlawful for any person licensed under this subsection to sell fish to

any person other than a fish dealer licensed under G.S. 113-169.3 unless the seller is also a licensed fish dealer. A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. ~~Proceeds derived~~ Gross proceeds from the sale of fish may be used only for ~~charitable purposes.~~ charitable, religious, educational, civic, or conservation purposes and shall not be used to pay tournament expenses."

Section 4.14. G.S. 113-168.5 reads as rewritten:

"**§ 113-168.5. License endorsements for Standard Commercial Fishing ~~License and Retired Standard Commercial Fishing~~ License.**

~~(a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.~~

~~(b) Vessel Endorsements. –~~

~~(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:~~

~~a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;~~

~~b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or~~

~~c. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.~~

~~(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel for which the required license has been properly endorsed.~~

~~(3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:~~

~~a. One dollar ($1.00) per foot for a vessel not over 18 feet in length.~~

~~b. One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.~~

~~e. Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.~~

~~d. Six dollars ($6.00) per foot for a vessel over 50 feet in length.~~

~~(4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).~~

~~(5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL, RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.~~

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in ~~the~~ coastal fishing ~~waters of the State;~~ waters, to land menhaden taken by purse seine, ~~in the State;~~ or to sell menhaden ~~from a vessel in the State~~ taken by purse seine without obtaining a menhaden endorsement of a ~~SCFL or RSCFL.~~ SCFL. The fee for a menhaden endorsement shall be two dollars ($2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Division shall issue a shellfish endorsement of a SCFL ~~or RSCFL~~ to a North Carolina resident at no charge. The holder of a SCFL with a shellfish endorsement is authorized to take and sell shellfish."

Section 4.15. Article 14A of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-168.6. Commercial fishing vessel registration.**

(a) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:

(1) A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;
(2) A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or
(3) A certification of documentation has been issued for the vessel that lists a home port in the State under 46 U.S.C. § 12101, et seq., as amended.

(b) The owner of a vessel used in a commercial fishing operation in the coastal fishing waters of the State or a North Carolina vessel used to land or sell fish in the State shall register the vessel with the Division. It is unlawful to use a vessel that is not registered with the Division in a commercial fishing operation in the coastal fishing waters of the State. It is unlawful to use a North Carolina vessel that is not registered with the Division to land or sell fish in the State. No registration is required for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel that is properly registered.

(c) The annual fee for a commercial fishing vessel registration shall be determined by the length of the vessel and shall be in addition to the fee for other licenses issued under this Article. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The annual fee for a commercial fishing vessel registration is:
(1) One dollar ($1.00) per foot for a vessel not over 18 feet in length.
(2) One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.
(3) Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.
(4) Six dollars ($6.00) per foot for a vessel over 50 feet in length.

(d) A vessel may be registered at any office of the Division. A commercial fishing vessel registration expires on the last day of the license year.

(e) Within 30 days of the date on which the owner of a registered vessel transfers ownership of the vessel, the new owner of the vessel shall notify the Division of the change in ownership and request that the Division transfer the commercial fishing vessel registration to the new owner. The notification of a change in the ownership of a vessel and request that the commercial fishing vessel registration be transferred shall be accompanied by proof of the transfer of the vessel."

Section 4.16. G.S. 113-169 reads as rewritten:

"**§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

A person who is not a ~~resident of North Carolina,~~ North Carolina resident, who is not eligible for a SCFL under this Article, and who only seeks to engage in ~~menhaden fishing~~ a commercial fishing operation for the harvest and sale of menhaden is eligible to ~~purchase~~ obtain a menhaden license for nonresidents. The fee for the menhaden license for nonresidents shall be two dollars ($2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The menhaden license for nonresidents shall be required for the mother ship to take, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be

required for a purse boat carrying a purse seine. The application for a menhaden license for nonresidents must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation for the harvest and sale of menhaden under the direction of a person who holds a valid menhaden license for nonresidents is not required to hold a menhaden license for nonresidents or a SCFL."

Section 4.17. G.S. 113-169.2 reads as rewritten:

"**§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

(a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public or private grounds of the State by mechanical means or ~~for commercial use~~ in quantities greater than the personal use limits set forth in subsection (i) of this section by any means without holding either a shellfish license or a shellfish endorsement of a ~~SCFL or RSCFL.~~ SCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to ~~purchase~~ obtain a shellfish license without holding a ~~SCFL or RSCFL.~~ SCFL. ~~The license includes the privilege~~ The shellfish license authorizes the licensee to sell ~~shellfish to a licensed fish dealer.~~ shellfish.

~~(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City Office. Any person who is issued a shellfish license is eligible to renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.~~

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a ~~resident of North Carolina.~~ North Carolina resident.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish ~~for commercial use~~ in quantities greater than the personal use limits set forth in subsection (i) of this section from the public or private grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

~~(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.~~

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past

30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Exemption. -- Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's or guardian's shellfish license.

(i) Taking Shellfish Without a License for Personal Use. --

(1) A person may take shellfish for personal use without obtaining a license under this section in quantities up to:

a. One bushel of oysters per day.

b. One-half bushel of scallops per day.

c. One hundred clams per day.

d. Ten conchs per day.

e. One hundred mussels per day.

(2) Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:

a. Two bushels of oysters per day.

b. One bushel of scallops per day.

c. Two hundred clams per day.

d. Twenty conchs per day.

e. Two hundred mussels per day."

Section 4.18. G.S. 113-169.3 reads as rewritten:

"**§ 113-169.3. Licenses for fish dealers.**

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application ~~in the Morehead City Office~~ at any office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when

necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section. Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this ~~article:~~ Article:

(1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;

(2) To sell fish to the public; or

(3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

~~Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section.~~

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or official agency to sell fish taken or processed in connection with research or demonstration projects;

(2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;

(3) The fish are shipped to a person by a dealer from without the State;

(4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or

(5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars ($50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in oysters: $50.00;
(2) Dealing in scallops: $50.00;
(3) Dealing in clams: $50.00;
(4) Dealing in hard or soft crabs: $50.00;
(5) Dealing in shrimp, including bait: $50.00;
(6) Dealing in finfish, including bait: $50.00;
(7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: $50.00; or
(8) Consolidated license (all categories): $300.00.

Any person subject to fish dealer licensing requirements who deals in fish not included in the above categories shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this subsection. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location, expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.

~~(h) Application for Replacement License. -- A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.~~

(h1) Name or Address Change. -- If the name or address of a licensee changes, the licensee shall, within 30 days, apply for a replacement fish dealer license bearing the correct name and address. If the licensee fails to comply with this requirement, the license is revoked. A revocation under this subsection is not subject to G.S. 150B-3.

(i) Unlawful Purchase ~~and Sale~~ of Fish. -- It is unlawful for a fish dealer to buy or accept fish ~~unless the~~ unless, at the time of the transaction:

(1) The seller or donor ~~possesses~~ presents a current and valid ~~SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c),~~ license to sell the type of fish being offered;
(2) The seller or donor presents the commercial fishing vessel registration of the vessel that was used to take the fish being offered; and ~~the~~
(3) The dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i).

~~It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.~~

(j) Transfer Prohibited. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section."

Section 4.19. G.S. 113-170.1 reads as rewritten:

"**§ 113-170.1. Nonresidents reciprocal agreements.**

Persons who are not North Carolina residents are not ~~entitled~~ eligible to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are ~~entitled to~~ eligible to hold North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions."

Section 4.20. G.S. 113-173 reads as rewritten:

"**§ 113-173. Recreational Commercial Gear License.**

(a) License Required. -- Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational ~~quotas or~~ possession limits. It is unlawful for any person licensed under this section or fishing under a RCGL to possess fish in excess of recreational possession limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (j) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar ($2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons.

(4) A person using nonmechanical means may take shellfish for personal use within the limits specified in G.S. 113-169.2(i) without holding a RCGL."

Section 4.21. G.S. 113-183 reads as rewritten:

"**§ 113-183. Unlawful purchase, possession, transportation and sale of fish.**

(a) It is unlawful to possess, transport, offer to transport, sell, offer to sell, receive, buy, or attempt to buy any fish regulated by the Department with knowledge or reason to believe that such fish are illicit.

(b) Fish are illicit when taken, possessed, or dealt with unlawfully, or when there has occurred at any time with respect to such fish a substantial failure of compliance with the applicable provisions of this Subchapter or of rules made under the authority of this Subchapter.

(c) It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter."

Section 4.22. G.S. 113-223 reads as rewritten:

"**§ 113-223. Reciprocal agreements by Department generally.**

Subject to the specific provisions of ~~G.S. 113-153~~ G.S. 113-169.5 and ~~G.S. 113-161~~ G.S. 113-170.1 relating to reciprocal provisions as to landing and selling catch and as to licenses, the Department is empowered to make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter. Pursuant to such agreements the Department may modify provisions of this Subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of marine and estuarine resources."

Section 4.23. Article 19A of Chapter 113 of the General Statutes reads as rewritten:

"ARTICLE 19A.

"~~South Atlantic~~ Fishery Management ~~Council.~~ Councils.

"**§ 113-259. North Carolina members of the South Atlantic Fishery Management Council.**

(a) In pursuance of Section 302 of the ~~Magnuson~~ Magnuson-Stevens Fishery Conservation and Management Act, 16 ~~United States Code~~ U.S.C. § 1801 ~~et seq.,~~ , et seq., there shall be at least two members of the South Atlantic Fishery Management Council from the State of North Carolina.

(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the State, which official is the Director of the Division of Marine Fisheries of the Department or his designee.

(c) Pursuant to the enabling legislation, other members from the State of North Carolina are selected by the United States Secretary of Commerce from a list of qualified individuals submitted by the Governor of the State. The list of nominees shall be compiled by the Marine Fisheries Commission and must be comprised of individuals who are knowledgeable and experienced with regard to the management, conservation, or commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward of the ~~States~~ states of North Carolina, South Carolina, Georgia, and Florida. Prior to submission of the list of nominees, the Governor may consult with the Commission regarding additions to the list of nominees to be

submitted. Should it be necessary for the Governor to submit additional nominees, the list of nominees shall be compiled by the Marine Fisheries Commission.

"**§ 113-260. North Carolina members of the Mid-Atlantic Fishery Management Council.**

(a) In pursuance of Section 302 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., there shall be at least two members of the Mid-Atlantic Fishery Management Council from the State of North Carolina.

(b) The first Council member shall be the principal State official with marine fishery management responsibility and expertise in the State, which official is the Director of the Division of Marine Fisheries of the Department or his designee.

(c) Pursuant to the enabling legislation, other members from the State of North Carolina are selected by the United States Secretary of Commerce from a list of qualified individuals submitted by the Governor of the State. The list of nominees shall be compiled by the Marine Fisheries Commission and must be comprised of individuals who are knowledgeable and experienced with regard to the management, conservation, or commercial or recreational harvest of the fishery resources in the Atlantic Ocean seaward of the states of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina. Prior to submission of the list of nominees, the Governor may consult with the Commission regarding additions to the list of nominees to be submitted. Should it be necessary for the Governor to submit additional nominees, the list of nominees shall be compiled by the Marine Fisheries Commission."

Section 4.24. Section 5.2 of S.L. 1997-400 reads as rewritten:

"Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this Part and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of S.L. 1997-256; Section 3 of S.L. 1997-347; and Section 6.1 of this act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that ~~are renewed.~~ were issued during the previous license year. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel license on ~~1 July~~ 30 June 1999 is eligible to receive a SCFL. Any person who holds a valid nonvessel endorsement to sell fish, other than a nonvessel endorsement to sell fish issued for an aquaculture operation or a fishing tournament, on 30 June 1999 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire ~~1 July~~ 30 June 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria ~~for~~ to be used by the SCFL Eligibility Board in determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal fishing and protection of the environment; and any other factors the Commission determines to be relevant. The ~~Division~~ SCFL Eligibility Board shall review each application for a SCFL that ~~it~~ the Division receives during the application period to determine whether the applicant is eligible for a SCFL under the eligibility criteria established by the Commission. The Division shall issue SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

(i) SCFL Eligibility Board. There is established a SCFL Eligibility Board. The Board shall apply the eligibility criteria adopted by the Commission to determine whether an applicant for a SCFL is eligible for a SCFL under subsection (h) of this section. The Board shall consist of the Secretary of Environment and Natural Resources or the Secretary's designee, the Fisheries Director or the Director's designee, and the Chair of the Commission or the Chair's designee. The Secretary shall designate one member of the Board to serve as Chair of the Board. The Commission shall adopt rules to govern the operation of the Board. The Board is exempt from the provisions of Article 3 of Chapter 150B of the General Statutes. Decisions of the Board shall be subject to judicial review under the provisions of Article 4 of Chapter 150B of the General Statutes."

PART V. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 5.1. Unless otherwise expressly provided, every agency to which this act applies shall adopt rules to implement the provisions of this act only in accordance with the provisions of Chapter 150B of the General Statutes. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 5.2. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 5.3. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 5.4. Sections 1.3, 1.5, 2.1, 3.2, 3.6, 4.4, 4.5, 4.23, 5.1, 5.2, 5.3, and 5.4 of this act are effective when this act becomes law. Sections 3.5 and 3.7 of this act become effective December 1, 1998, and apply to offenses committed on or after that date. Sections 1.4, 3.3, 3.4, 3.8, 4.1, 4.2, 4.3, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, and 4.24 become effective July 1, 1999. Section 4.6 is effective retroactively to August 14, 1997. Sections 1.1, 1.2, 1.6, 1.7, 3.1, 4.7, and 4.8 are effective retroactively to September 1, 1997. Section 4.15 expires September 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1448/Senate Bill 1284

SHORT TITLE: 1998 Marine Fisheries Amendments

SPONSOR(S): Representatives Preston and Redwine; Senators Albertson and Jordan

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
EXPENDITURES	No Significant Fiscal Impact				
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Division of Marine Fisheries, Marine Fisheries Commission

EFFECTIVE DATE: Various

BILL SUMMARY:

Makes numerous changes to marine fisheries law. Revises (in parts I through III of act) GS 143B-289.52, GS 113-182.1, and GS 113-221(e) concerning authority of Marine Fisheries Comm'n to adopt rules, prepare fishery management plans, and enforce proclamations issued by Fisheries Director. Revises (in part IV of act) several statutes on fishing licenses, including the provisions in GS 113-154.1 on endorsements to sell fish and GS 113-168.4 on persons authorized to sell fish; the definitions in GS 113-168 concerning coastal and estuarine commercial fishing licenses; the general provisions in GS 113-168.1 on obtaining licenses and endorsements; the provisions in GS 113-168.2 on obtaining, assigning, and transferring standard commercial fishing licenses (SCFLs) and GS 113-168.5 on license endorsements for SCFLs; the provisions in GS 113-168.3 on transferring retired standard commercial fishing licenses (RSCFLs); the vessel registration provisions in GS 113-168.6; and the provisions in GS 113-169, 113-169.2, 113-169.2 on menhaden, shellfish, and fish dealer licenses. Also adds new GS 113-

260 containing procedure for appointment of NC members to Mid-Atlantic Fishery Management Council; and establishes SCFL Eligibility Board, consisting of Sec'y of Environment and Natural Resources, Fisheries Director, and chair of Marine Fisheries Comm'n (or their designees) to determine eligibility for SCFLs. Provides (in part V of act) that every agency to which act applies must adopt rules to implement act. Parts I through III and V are effective when they become law; the various sections of part IV become effective as specified in the act. [1]

ASSUMPTIONS AND METHODOLOGY:
Effective July 1, 1999, the 1997 Fisheries Reform Act (Chapter 400, 1997 Session Laws) establishes a new Standard Commercial Fishing License (SCFL) which will be available only to persons holding a valid endorsement to sell fish on July 1, 1999 (the bill proposes to change this date to June 30, 1999). In addition, up to 500 additional SCFLs may be available for distribution by lot to new entrants or persons not otherwise eligible for a SCFL.

According to the Division of Marine Fisheries the bill in not expected to have a significant fiscal impact unless a clerical position is needed to support the SCFL Eligibility Board established in Section 4.21. The board is to consist of three members and is responsible for determining the eligibility of an applicant for a commercial fishing license relative to the eligibility criteria adopted by the Marine Fisheries Commission.

The Division of Marine Fisheries currently provides administrative support to the Appeals Panel established in 1994 to review petitions for the issuance of fishing licenses under the license moratorium in effect since July 1, 1994. The division is currently seeking a Processing Assistant III position at an annual cost of $29,738 for the Appeals Panel through the Governor's 1998 Recommended Expansion Budget and expects this position to support the SCFL Eligibility Board beginning with the 1999-2000 fiscal year. In 1994 the General Assembly appropriated $10,000 to cover the panel's expenses. Although, the division has paid operating expenses in excess of the appropriation with existing resources since the panel was established, it is uncertain whether the Eligibility Board established in this bill will experience a comparable workload and carry out its responsibilities in a manner similar to the Appeals Panel, thereby requiring permanent staff support and additional operating support.

Demand for the SCFL is somewhat unknown. Petitions for licenses heard by the Appeals Panel have declined since the first year of the moratorium. The panel reviewed 369 petitions in FY 94-95, 377 in FY 95-96, 301 in FY 96-97 and 178 through October of the 1997-98 fiscal year. In addition, petitions heard by the Appeals Panel include persons seeking a commercial license for the sole purpose of using commercial gear, not to derive income from the sale of fish. Those persons will be able to purchase a new Recreational Commercial Gear License (RCGL) and likely will not apply for a SCFL. If demand is low, the Eligibility Board will not have many applications to review.

The Appeals Panel currently holds two meetings each month to hear petitions for commercial fishing licenses, but the Eligibility Board does not necessarily have to use a "hearing" format to

[1] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, Vol. 1998, May 25, 1998.

determine eligibility for the lot. Depending on the eligibility criteria established by the commission, the Eligibility Board may be able to expedite consideration of applicants relative to the process used by the Appeals Panel.

Until there is a better indication of the actual level of demand for SCFLs through the new license pool process and the operating needs of the Eligibility Board are more clearly defined based on the eligibility criteria as adopted by the Marine Fisheries Commission, it is anticipated that the division can continue to provide staff support from existing resources.

Although the bill appears to establish fees in Section 4.7 to replace lost or destroyed licenses and endorsements and in Section 4.11 for vessel registrations, these sections are recodifications of current fees redlined in Sections 4.8 and 4.11 respectively.

TECHNICAL CONSIDERATIONS:

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733-4910
PREPARED BY: Mona Moon

APPROVED BY:

DATE: July 13, 1998

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August 11, 1998

MEMORANDUM

To: House Committee on Finance

From: Jeff Hudson, House Environment Committee Counsel

Regarding: Proposed Committee Substitute for House Bill 1448, 2nd Edition (1998 Marine Fisheries Amendments)

Proposed Committee Substitute for House Bill 1448, 2nd Edition (1998 Marine Fisheries Amendments)

PART I. MARINE FISHERIES COMMISSION

Sections 1.1 and 1.2 update cross-references. *Effective retroactively to September 1, 1997.*

Section 1.3 removes an unnecessary tax reference. *Effective when this act becomes law.*

Section 1.4 authorizes the Marine Fisheries Commission (Commission) to regulate participation in a fishery if a federal fishery management plan has placed a quota on the State for the harvest of fish in that fishery. If the Commission regulates a fishery pursuant to this authority, the Division of Marine Fisheries (Division) may issue a license to participate in the fishery to a person who:

- Held a license issued by the Division to harvest, land, or sell fish during at least two of the three license years preceding the control date established by the Commission and
- Participated in the fishery during two of those license years by landing in the State at least the minimum number of pounds of fish established by the Commission

Effective July 1, 1999.

Section 1.5 clarifies a reference to federal law and authorizes the Commission to adopt temporary rules needed to remain in compliance with changes in federal fishery management plans. *Effective when this act becomes law.*

Section 1.6 adds to the Commission's appointment statute a cross-reference to the prohibition against a member of the Commission receiving a financial benefit from a Fishery Resource Grant Program grant. *Effective retroactively to September 1, 1997.*

Section 1.7 corrects a typographical error in a cross-reference. *Effective retroactively to September 1, 1997.*

PART II. FISHERY MANAGEMENT PLANS

Section 2.1 changes the term "advisory council" to "fishery management plan advisory committee" and makes technical corrections to the term "Fishery Management Plan". This section also adds a section specifically authorizing the Commission to include in a fishery management plan a recommendation that the General Assembly limit participation in a fishery. The Commission may make this type of recommendation only if it determines that optimal yield cannot otherwise be achieved and must consider:

- Current participation in and dependence on the fishery
- Past fishing practices in the fishery
- Economics of the fishery
- Capability of vessels to be used in another fishery
- Cultural and social factors relevant to the fishery and affected communities
- Capacity of fishery to support biological parameters
- Equitable resolution of competing social and economic interests
- Other relevant considerations

Effective when this act becomes law.

PART III. MARINE FISHERIES LAW ENFORCEMENT

Section 3.1 updates a cross-reference. *Effective retroactively to September 1, 1997.*

Section 3.2 removes an unnecessary tax reference. *Effective when this act becomes law.*

Sections 3.3 and 3.4 update cross-references. *Effective July 1, 1999.*

Section 3.5 increases the penalty for the unauthorized taking of shellfish from a privately held shellfish bottom from a Class 2 misdemeanor to a Class A1 misdemeanor. *Effective December 1, 1998 and applies to offenses committed on or after that date.*

Section 3.6 amends the "act of God" defense to proclamation violations so that it is a defense to an enforcement action when a person is prevented from receiving notice of the proclamation due to a natural disaster or other act of God. *Effective when this act becomes law.*

Section 3.7 makes it unlawful under the fisheries statutes to steal buoys, markers, stakes, nets, pots, and other related devices and increases the penalty for robbing from, stealing, or injuring these devices. *Effective December 1, 1998 and applies to offenses committed on or after that date.*

Section 3.8 updates a cross-reference. *Effective July 1, 1999.*

PART IV. FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 4.1 makes a conforming change to the vessel identification statute. *Effective July 1, 1999.*

Section 4.2 makes technical and conforming changes to the vessel identification statute related to commercial vessels. This section removes the income requirement from the definition of "commercial fishing vessel". *Effective July 1, 1999.*

Section 4.3 updates a cross-reference. *Effective July 1, 1999.*

Section 4.4 removes an unnecessary tax reference. *Effective when this act becomes law.*

Section 4.5 makes a technical change. *Effective when this act becomes law.*

Section 4.6 deletes the prohibition against selling fish using another person's endorsement to sell. This provision was mistakenly added in the Fisheries Reform Act. *Effective retroactively to August 14, 1997.*

Sections 4.7 and 4.8 delete old penalty provisions that conflict with the new penalties for the unlawful sale or purchase of fish established by the Fisheries Reform Act of 1997. *Effective retroactively to September 1, 1997.*

Section 4.9 amends the definition of "commercial fishing operation" to delete taking people fishing for hire and exclude taking fish in a recreational fishing tournament with recreational gear and taking fish under a Recreational Commercial Gear License (RCGL). This section also defines "immediate family" for purposes of transferring a Standard Commercial Fishing License (SCFL) or Retired Standard Commercial Fishing License (RSCFL). Finally, Section 4.9 amends the definition of "North Carolina resident" found in the commercial fishing license statutes so that it is consistent with the definition of "resident" that applies throughout the marine, estuarine, and wildlife resources statutes. *Effective July 1, 1999.*

Section 4.10 amends and expands the general licensing provisions statute to:

- Provide that all coastal and estuarine fishing licenses, except the RCGL, expire on June 30 of each year
- Require that a person fishing pursuant to an assigned SCFL must have the SCFL and the assignment available for inspection
- Consolidate provisions from other statutes governing license issuance and renewal
- Require a licensee to apply for a replacement license within 30 days of a change in the licensee's name or address and authorize the Commission to establish replacement license fees of up to $10.00 in order to compensate the Division for the administrative costs associated with issuing replacement licenses
- Provide that eligibility to renew a SCFL extends until one year after the date the SCFL expires
- Prohibit a person from obtaining or renewing a license if, at the time of application, any other license held by the person has been suspended or revoked
- Prohibit a person from obtaining a license if, within the three years prior to application, the person has been determined to be responsible for four or more violations of federal or state laws governing the management of marine and estuarine resources
- Require a person applying for a license to certify that the person has not been determined to be responsible for four or more violations of federal or state laws governing the management of marine and estuarine resources
- Authorize the Division to cancel a license issued based on false information supplied by the applicant

(**Note: The Proposed Committee Substitute** for House Bill 1448, 2nd Edition requires all licensees to apply for a replacement license within 30 days of a change in the licensee's name or address. Under House Bill 1448, 2nd Edition, only certain types of licensees, such as fish dealers and pier owners, must comply with this requirement. Also, the proposed committee substitute authorizes the Commission to establish replacement license fees of up to $10.00 in order to compensate the Division for the administrative costs associated with issuing the replacement license, while House Bill 1448, 2nd Edition establishes a statutory $10.00 fee for all replacement licenses.) *Effective July 1, 1999.*

Section 4.11 amends the SCFL statute to:

- Clarify that in order to take shellfish, a person must hold either a SCFL with a shellfish endorsement or a shellfish license
- Clarify that the SCFL authorizes the use of only one vessel at a time, unless the Commission adopts rules to exempt from this requirement unlicensed auxiliary vessels engaged in particular fisheries
- Delete general licensing provisions that were consolidated into the general licensing provision statute

- Delete references to vessel endorsements that are no longer necessary due to the replacement by Sections 4.14 and 4.15 of the vessel endorsement system with the vessel registration system
- Base the residency requirement for all persons, except military personnel, applying for a SCFL on the filing of a tax return as a North Carolina resident
- Exempt assignments lasting five days or less from filing requirements
- Provide that an assignee cannot further assign a SCFL
- Add assignment termination in the following cases:
    - the estate of the assignor notifies the assignee and the Division of termination
    - the assignee becomes ineligible to hold a license
    - upon the death of the assignee
    - upon suspension or revocation of the SCFL
    - at the end of the license year
- Clarify that a SCFL may only be transferred by the Division
- Clarify the process by which a SCFL is transferred through an estate

Effective July 1, 1999.

Section 4.12 clarifies that all licensing provisions applicable to the SCFL are also applicable to the RSCFL, except that a RSCFL may not be assigned. This section also makes the transfer provisions for the RSCFL consistent with the SCFL transfer provision revised by Section 4.11. *Effective July 1, 1999.*

Section 4.13 clarifies that one must have the specific license to sell the type of fish one is offering for sale. This section also deletes the term "nonprofit" from the provision governing the sale of fish by recreational fishing tournaments. Finally, Section 4.13 clarifies that the sale of fish by a recreational fishing tournament must be to a licensed fish dealer; gross proceeds from the sale must be used for charitable, religious, educational, civic, or conservation purposes only; and gross proceeds from the sale must not be used to pay tournament expenses. *Effective July 1, 1999.*

Section 4.14 deletes the vessel endorsement provision. These provisions are reconstituted in the commercial fishing vessel registration requirements established by Section 4.15. Section 4.14 also clarifies that a menhaden endorsement of a SCFL is only required to take, land, or sell menhaden taken by a purse seine. Finally, Section 4.14 provides that a shellfish endorsement of a SCFL authorizes the harvest and sale of shellfish. *Effective July 1, 1999.*

Section 4.15 requires vessels engaged in commercial fishing operations, except for non-motorized auxiliary vessels, to be registered by the Division. This requirement replaces the vessel endorsement provisions deleted by Section 4.14. Section 4.15 requires an owner to annually register each vessel engaged in a commercial fishing operation. Vessel registration fees remain the same as the vessel endorsement fees deleted by Section 4.14. *Effective July 1, 1999 and expires September 1, 2003.*

Section 4.16 clarifies the eligibility requirements for obtaining a menhaden license for nonresidents not eligible for a SCFL. This section also provides that crew members of a vessel engaged in a commercial fishing operation harvesting and selling menhaden are not required to hold a menhaden nonresident license or SCFL when working under the direction of a person who holds the menhaden license. *Effective July 1, 1999.*

Section 4.17 provides that a shellfish license is required for taking shellfish from privately held grounds. This section also clarifies the personal use exemption to the shellfish license requirements. Finally, Section 4.17 moves the issuance and renewal provisions from the shellfish license statute to the general licensing provision statute and deletes the reference to the vessel endorsement provisions deleted by Section 4.14. *Effective July 1, 1999.*

Section 4.18 provides that fish dealer licenses will be available at all offices of the Division. This section also provides that failure to comply with the requirement that a fish dealer apply for a replacement license within 30 days after changing the name or address of the fish dealer operation will result in a revocation of the fish dealer license. Furthermore, Section 4.18 clarifies that for a fish dealer to lawfully buy fish, the seller must present the license required to sell the type of fish being sold and the registration for the vessel used to catch the fish. Finally, this section limits the provision governing the unlawful purchase, possession, and sale of fish to fish dealers.
(**Note: The Proposed Committee Substitute** for House Bill 1448, 2nd Edition limits the provision governing the unlawful purchase, possession, and sale of fish to fish dealers, while under House Bill 1448, 2nd Edition, this provision applies to any person.) *Effective July 1, 1999.*

Section 4.19 provides that the replacement license provision in the general licensing statute applies to pier licenses. *Effective July 1, 1999.*

Section 4.20 makes a technical change. *Effective July 1, 1999.*

Section 4.21 provides that it is unlawful for a person fishing under a RCGL to possess fish in excess of recreational possession limits. This section also adds an exemption to the RCGL statute allowing a person to take shellfish by nonmechanical means up to the personal use limits without holding a RCGL.
(**Note: The Proposed Committee Substitute** for House Bill 1448, 2nd Edition deletes the $2.00 replacement fee for the RCGL and provides that the replacement license provision in the general licensing statute applies to the RCGL.) *Effective July 1, 1999.*

Section 4.22 updates cross-references. *Effective July 1, 1999.*

Section 4.23 provides for North Carolina membership in the Mid-Atlantic Fishery Management Council. This provision is parallel to the membership provision currently in place for North Carolina membership in the South Atlantic Fishery Management Council. *Effective when this act becomes law.*

Section 4.24 clarifies that the number of SCFLs available in each license year, beginning with the 2000-2001 license year, is the number of the temporary cap (number of endorsements to sell held June 30, 1999, plus an additional 500 SCFLs) less the sum of SCFLs issued and SCFLs renewed during the previous license year. This section also provides that a person who holds a non-vessel endorsement to sell, other than an endorsement for an aquaculture operation or fishing tournament, on June 30, 1999, is eligible to obtain a SCFL. Finally, Section 4.21 modifies the eligibility review process for the 500 additional SCFLs. The SCFL Eligibility Board (Board) is established to replace the Division in the application of the eligibility criteria established by the Commission. The Board is composed of the following members:

- The Secretary of Environment and Natural Resources or the Secretary's designee
- The Fisheries Director or the Director's designee
- The Chair of the Commission or the Chair's designee

Decisions by the Board are exempt from administrative review, but are subject to judicial review.
(**Note: The Proposed Committee Substitute** for House Bill 1448, 2nd Edition clarifies that the number of licenses issued plus the number of licenses renewed during a license year are not available for issuance during the subsequent license year.) *Effective July 1, 1999.*

PART V. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 5.1 authorizes every agency to which this act applies to adopt temporary rules until all rules necessary to implement this act have been adopted as temporary or permanent rules. *Effective when this act becomes law.*

Section 5.2 explains the use of headings in the bill. *Effective when this act becomes law.*

Section 5.3 provides for the severability of the provisions of the bill. *Effective when this act becomes law.*

Section 5.4 establishes the effective dates of the sections of the bill. *Effective when this act becomes law.*

FISCAL ANALYSIS MEMORANDUM

DATE: August 11, 1998

TO: House Committee on Finance

FROM: Mona Moon
Fiscal Research Division

RE: Proposed Committee Substitute for House Bill 1448, 2nd Edition
1998 Marine Fisheries Amendments

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	Up to $2,425 annually beginning with FY 1999-00				
EXPENDITURES	No Significant Fiscal Impact				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Division of Marine Fisheries, Marine Fisheries Commission

EFFECTIVE DATE: Various

BILL SUMMARY:

FIRST EDITION: Makes numerous changes to marine fisheries law. Revises (in parts I through III of act) GS 143B-289.52, GS 113-182.1, and GS 113-221(e) concerning authority of Marine Fisheries Commission to adopt rules, prepare fishery management plans, and enforce proclamations issued by Fisheries Director. Revises (in part IV of act) several statutes on fishing licenses, including the provisions in GS 113-154.1 on endorsements to sell fish and GS 113-168.4 on persons authorized to sell fish; the definitions in GS 113-168 concerning coastal and estuarine commercial fishing licenses; the general provisions in GS 113-168.1 on obtaining licenses and endorsements; the provisions in GS 113-168.2 on obtaining, assigning, and transferring standard commercial fishing licenses (SCFLs) and GS 113-168.5 on license endorsements for SCFLs; the provisions in GS 113-168.3 on transferring retired standard commercial fishing licenses (RSCFLs); the vessel registration provisions in GS 113-168.6; and

the provisions in GS 113-169, 113-169.2, 113-169.2 on menhaden, shellfish, and fish dealer licenses. Also adds new GS 113-260 containing procedure for appointment of NC members to Mid-Atlantic Fishery Management Council; and establishes SCFL Eligibility Board, consisting of Secretary of Environment and Natural Resources, Fisheries Director, and chair of Marine Fisheries Commission (or their designees) to determine eligibility for SCFLs. Provides (in part V of act) that every agency to which act applies must adopt rules to implement act. Parts I through III and V are effective when they become law; the various sections of part IV become effective as specified in the act. [1]

SECOND EDITION: House committee substitute makes the following changes to 1st edition. Amends GS 143B-289.52, to authorize the Marine Fisheries Commision to regulate participation in a fishery that is subject to any federal fishery management plan imposing quotas on the state and to issue licenses under specified conditions. Amends GS 113-208(a) and 113-268 to make violation of these provisions a Class A1 (now, Class 2) misdemeanor. Provides that persons 65 years or older and eligible for a standard commercial fishing license (SCFL) may apply for either a SCFL or retired standard commercial fishing license. Deletes changes to 1993 SL, Chapter 576. Makes other technical changes. [2]

HOUSE FINANCE PCS: The proposed committee substitute makes the following changes to the 2nd edition: Requires all licensees to apply for replacement license within 30 days of change of address or licensee name. Authorizes the Marine Fisheries Commission to establish replacement license fees of up to $10.00 to compensate the division for administrative costs associated with issuing replacements. Limits provision governing the unlawful purchase, possession, and sale of fish to fish dealers. Makes additional clarifying change. [3]

ASSUMPTIONS AND METHODOLOGY:

REVENUES:

The bill authorizes the Marine Fisheries Commission to establish a replacement fee for lost, stolen or destroyed licenses, including endorsements. The fee charged may not exceed $10.00 and shall be set by the commission to compensate the division for associated administrative costs.

Currently, the Division of Marine Fisheries charges $5.00 for vessel licenses and related endorsements to sell that are either destroyed or unreadable. In addition, the division routinely provides copies of its license receipts to replace lost licenses until a new one can be issued for the next license year. Such "certified copies" are currently provided free of charge.

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[1] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, Vol. 1998, May 25, 1998.

[2] *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, Vol. 1998, July 29, 1998.

[3] Memorandum to House Committee on Finance from Jeff Hudson, House Environment Committee Counsel, August 11, 1998.

The division issued a total of 30,964 commercial fishing licenses and vessel endorsements during the 1997-98 fiscal year. Of these, 115 were either destroyed or unreadable and replaced for a $5.00 fee or total replacement fee revenue of $575.00. Certified copies were issued for another 192 licenses that were reported lost during the fiscal year.

The division is unsure how many of each type of license will be issued under the new license system effective July 1, 1999, but does not anticipate a dramatic increase in the total number of licenses issued. Unless the division must issue a substantial number of licenses as a result of the requirement that a replacement be issued within 30 days of a change in the licensee's name or address, the division is not likely to experience a significant change in the number of replacement licenses issued.

The proposal to allow the Marine Fisheries Commission to establish the fee ties the amount of the fee to the costs associated with administering replacement license requests. Assuming the division continues to replace approximately 300 licenses each year, and the commission sets the replacement fee at $10.00, the maximum allowed, the division would receive an additional $2,425.00 per year in license revenues (relative to current replacement fee receipts of $575.00).

EXPENDITURES:

Effective July 1, 1999, the 1997 Fisheries Reform Act (Chapter 400, 1997 Session Laws) establishes a new Standard Commercial Fishing License (SCFL) which will be available only to persons holding a valid endorsement to sell fish on July 1, 1999 (the bill proposes to change this date to June 30, 1999). In addition, up to 500 additional SCFLs may be available for distribution by lot to new entrants or persons not otherwise eligible for a SCFL.

According to the Division of Marine Fisheries the bill in not expected to have a significant fiscal impact unless a clerical position is needed to support the SCFL Eligibility Board established in Section 4.24. The board is to consist of three members and is responsible for determining the eligibility of an applicant for a commercial fishing license relative to the eligibility criteria adopted by the Marine Fisheries Commission.

The Division of Marine Fisheries currently provides administrative support to the Appeals Panel established in 1994 to review petitions for the issuance of fishing licenses under the license moratorium in effect since July 1, 1994. The division is currently seeking a Processing Assistant III position at an annual cost of $29,738 for the Appeals Panel through the Governor's 1998 Recommended Expansion Budget and expects this position to support the SCFL Eligibility Board beginning with the 1999-2000 fiscal year. In 1994 the General Assembly appropriated $10,000 to cover the panel's expenses. Although, the division has paid operating expenses in excess of the appropriation with existing resources since the panel was established, it is uncertain whether the Eligibility Board established in this bill will experience a comparable workload and carry out its responsibilities in a manner similar to the Appeals Panel, thereby requiring permanent staff support and additional operating support.

Demand for the SCFL is somewhat unknown. Petitions for licenses heard by the Appeals Panel have declined since the first year of the moratorium. The panel reviewed 369 petitions in FY 94-

95, 377 in FY 95-96, 301 in FY 96-97 and 178 through October of the 1997-98 fiscal year. In addition, petitions heard by the Appeals Panel include persons seeking a commercial license for the sole purpose of using commercial gear, not to derive income from the sale of fish. Those persons will be able to purchase a new Recreational Commercial Gear License (RCGL) and likely will not apply for a SCFL. If demand is low, the Eligibility Board will not have many applications to review.

The Appeals Panel currently holds two meetings each month to hear petitions for commercial fishing licenses, but the Eligibility Board does not necessarily have to use a "hearing" format to determine eligibility for the lot. Depending on the eligibility criteria established by the commission, the Eligibility Board may be able to expedite consideration of applicants relative to the process used by the Appeals Panel.

Until there is a better indication of the actual level of demand for SCFLs through the new license pool process and the operating needs of the Eligibility Board are more clearly defined based on the eligibility criteria as adopted by the Marine Fisheries Commission, it is anticipated that the division can continue to provide staff support from existing resources.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☒ Committee Substitute for
H.B. 1448 A BILL TO BE ENTITLED AN ACT TO AMEND THE FISHERIES REFORM ACT OF 1997 AND RELATED MARINE FISHERIES LAWS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

☐ 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.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 4

SENATE BILL 1242*
Commerce Committee Substitute Adopted 6/16/98
Finance Committee Substitute #2 Adopted 7/9/98
House Committee Substitute Favorable 8/5/98

Short Title: Wireless Telephone Service/Tower Act. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"Chapter 62B.

"Wireless Telephone Service.

"**§ 62B-1. Definitions.**

As used in this Chapter:

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

(2) 'Automatic number identification' or 'ANI' means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call.

(3) 'CMRS' means 'commercial mobile radio service' under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term 'wireless' and service provided by any wireless two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, or the functional competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, SMR mobile service, or a network radio access line which has access to E911 service.

(4) 'CMRS connection' means each mobile handset telephone number assigned to a CMRS customer with a billing address in North Carolina.

(5) 'CMRS provider' means a person or entity who is licensed by the FCC to provide CMRS service or is reselling CMRS service.

(6) 'Eligible PSAPs' means those public safety answering points that have opted to provide wireless Enhanced 911 service and have submitted written notice to their CMRS providers and to the Wireless 911 Board.

(7) 'FCC Order' means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted on December 1, 1997.

(8) 'Local exchange carrier' means any entity that is authorized to engage in the provision of telephone exchange service or exchange access in North Carolina.

(9) 'Mobile set telephone number' means the number assigned to a CMRS connection.

(10) 'Proprietary information' means customer lists and other related information, technology descriptions, technical information, or trade secrets, including the term 'trade secrets' as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152, and the actual or developmental costs of wireless Enhanced 911 systems that are developed, produced, or received internally by a CMRS provider or by a CMRS provider's employees, directors, officers, or agents.

(11) 'PSAP' ('public safety answering point') means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to such calls.

(12) 'Pseudoautomatic number identification' or 'Pseudo-ANI' means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.

(13) 'Service supplier' means a person or entity who provides exchange telephone service to a telephone subscriber.

(14) 'Wireless 911 system' means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits 911.

(15) 'Wireless Enhanced 911 system' means an emergency telephone system that provides the user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate PSAPs by selective routing based on the geographical location from which the call originated and provides the capability for ANI (or Pseudo-ANI) and ALI features, in accordance with the requirements of the FCC Order.

(16) 'Wireless Fund' means the Wireless Emergency Telephone System Fund required to be established and maintained pursuant to G.S. 62B-2(c).

"**§ 62B-2. Wireless 911 Board.**

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

(1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and one upon the recommendation of the North Carolina Association of County Commissioners;

(2) Five members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a sheriff, three representing CMRS providers licensed to do business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);

(3) Five members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a chief of police, two representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and

(4) The Secretary of Commerce or the Secretary's designee, who shall serve as the chair.

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

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

(c) There is established with the Treasurer the Wireless Fund into which the Board shall deposit all revenues derived from the service charge levied on CMRS connections in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set forth in this Chapter. (d) Consistent with the provisions of G.S. 143-3.2, the Board shall disburse the revenues remitted to the Wireless Fund in the manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of these revenues and advise the CMRS providers and eligible counties of such procedures within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

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

"**§ 62B-3. Amount of service charge.**

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

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

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

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

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

"**§ 62B-4. Management of funds.**

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

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

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

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

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

"§ 62B-5. Use of funds.

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

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

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

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

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

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

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

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

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

"§ 62B-6. Administrative fee.

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

"§ 62B-7. Provision of services.

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

"§ 62B-8. Audit.

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

"§ 62B-9. Customer records.

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

"§ 62B-10. Proprietary information.

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

"§ 62B-11. Limitation of liability.

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

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

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

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

"**§ 62A-10. Limitation of liability.**

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

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

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

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

(1) The lease shall require the lessee to permit other telecommunications carriers to co-locate on the communications tower on commercially reasonable terms between the lessee and the co-locating carrier until the communications tower reaches its capacity. Unless the State determines that co-location is not feasible at that location, the communications tower shall be designed and constructed to accommodate other carriers on the tower.

(2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.

(3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.

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

City and county ordinances apply to communications towers and antennas authorized under this section."

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

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

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

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1242

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1242-ARK-001 Page 1 of __

Date_____,1998

Comm. Sub. [yes]
Amends Title [no]
Forth Edition

moves to amend the bill on page 4, line 7, by deleting the subsection "(d)" which follows the period at the end of that line; and

on page 4, line 8 by rewriting that line to read:
" (d) Consistent with the provisions of G.S. 143-3.2, the Board shall disburse the revenues".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

North Carolina General Assembly
Legislative Services Office

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August 11, 1998

MEMORANDUM

TO: **House Committee on Finance**

FROM: **Steven Rose, Principal Attorney**

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

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

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

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

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

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

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

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

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

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

G.S. 62B-11 limits liability for personal injury and property damages. It does not apply to motor vehicle accidents.

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

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

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: S.B. 1242 as amended by Senate Finance (Version 2 of the Fiscal Note)

SHORT TITLE: Wireless Telephone Service/Towers Act

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

Millions

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Wireless Fund	**14.96**	**16.46**	**18.10**	**19.91**	**21.90**
EXPENDITURES					
Administration	**0.15**	**0.16**	**0.18**	**0.20**	**0.22**

Other Expenditure Estimates Not Possible at this Time

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wireless 911 Board, Department of Administration.

EFFECTIVE DATE: Sections 1 and 2 become effective 90 days after it becomes law. Appointments to the Wireless board should occur within 30 days of the effective dates of sections 1 and 2. The remainder becomes effective when it becomes law.

BILL SUMMARY: The bill creates a Wireless 911 Board, establishes the Wireless Fund, and directs the board to oversee the fund's operation. An $0.80 per month per subscriber charge on wireless customers statewide will generate revenue for the fund. Under the bill the carrier (Bell South Mobility, GTE, 360 Communications, etc.) collects the subscriber charge, and retains 1% of the total revenue to cover the costs of administration. The Wireless 911 board will also retain 1% for its expenses. The remaining revenue is distributed 60% to wireless carriers and 40% to the organizations that answer 911 calls. Of the 40% distributed to 911 organizations, 50% is divided equally among the total number of 911 organizations, and 50% is distributed according to population. The board can revise the fee every two years to a maximum rate of $1.25 per month per customer. The board will report to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee. The board is also subject to

the rule making review process. The bill also releases state agencies to lease public property for the construction of wireless communication towers.

BACKGROUND INFORMATION: In June 1996 the Federal Communications Commission adopted a "Report and Order," taking steps to foster major improvements in the quality and reliability of 911 services available to the customers of wireless telecommunications service providers. The new system recommended is called enhanced 911 or E911. E911 provides emergency service organizations (Public Safety Answering Points or PSAPs) with location information (ALI or Automatic Location Identification) and number of the cellular caller (ANI or Automatic Number Identification). At present wireless carriers usually provide access only to basic 9-1-1 services, which does not provide this information about cellular callers. GTE estimates that at least 25% of 911 calls made in North Carolina are from a cellular or wireless telephone.

In December of 1997 the FCC adopted a more specific Memorandum Opinion and Order. In this document the FCC outlines a two phase implementation process for E911. In Phase I of the E911 deployment, carriers are required to relay the telephone number of the originator of a 911 call (ANI), and the location of the cell site or base station receiving a 911 call (a capability often provided through a technique known as ``pseudo-ANI") to the designated emergency service organization (PSAP). For E911 Phase II, the FCC adopted rules requiring that, as of October 1, 2001, covered carriers provide to the designated PSAP the location of a 911 call by longitude and latitude within a radius of no more than 125 meters in 67 percent of all cases.

The FCC also stated that their mandate only applied if: 1) a PSAP capable of receiving and utilizing the E911 information requests that are wireless carrier provides that information and 2) a mechanism for cost recovery is available. This bill is an attempt to create a cost recovery structure.

ASSUMPTIONS AND METHODOLOGY:

Wireless Revenue: The Cellular Telecommunications Industry Association (CTIA) reports 55 million wireless phones exist nationwide. CTIA estimates national cellular market penetration is 20.52% of the population. Using the CTIA estimate, North Carolina's 1998-9 population projection of 7,670,783 suggests that 1,574,045 cellular phones will be used in North Carolina in FY 1998-9. No more specific information is available because cellular telephones are a deregulated industry, and each cellular provider's customer base is proprietary information.

Under the bill each cellular customer will be charged $0.80 per month once the legislation is enacted. Given the above estimates of the number of cellular telephones, this will generate approximately $1,259,236 in revenue per month in 1998-9, for a 1998-9 total of $15.11 million. Past experience suggests that the industry will grow more than 10% annually, although no market projections are available. This note assumes a 10% growth rate in the number of cellular telephones in fiscal years 1999-2000 through 2002-3.

	Customers	Monthly Rev.	Annual Rev.	Less Carrier Adm. Fee
FY 1998-9	1,574,045	1,259,236	15,110,832	14,959,724
FY 1999-0	1,731,450	1,385,160	16,621,915	16,455,696
FY 2000-1	1,904,594	1,523,676	18,284,107	18,101,266
FY 2001-2	2,095,054	1,676,043	20,112,517	19,911,392
FY 2002-3	2,304,559	1,843,647	22,123,769	21,902,531

The amounts under the "Less Carrier Adm. Fee" funds are placed a special Wireless Fund under the State Treasurer. One percent of the amount is used by the Board for administration.

Wireless Costs: Moines from the Wireless fund can be used for two types of expenses during Phase 1. First, commercial mobile radio service (CMRS) providers such as GTE, Bell South Mobility, and 360 Communications, can be reimbursed from the fund for the costs associated with the FCC Order. These costs are generally those associated with the technological changes needed to be able to 1) discover the telephone number of the caller and 2) find their approximate location - i.e. their nearest cellular tower. Because specific costs and customer information is proprietary, industry representatives are only willing to provide an average monthly cost estimate. For the larger companies, these estimates are based on a national model, and include start up and maintenance costs to be incurred between this summer and December 2001. In a consensus industry document, GTE estimates the cost for large, established providers with a large existing customer base will be between $0.15 and $0.27 per subscriber per month. The estimate for smaller, new competitor entrants is likely to be between $0.20 and $0.35 per subscriber per month. Currently there are 38 license holders in North Carolina that could apply for the funds. In the near future that number will increase to near 100. The specific types of costs are as follows:

Non-recurring/Upfront Costs
Switch Software/Hardware Upgrades
Database Development
Installation
Network Design and Connectivity
Map Overlay
Testing

Recurring/Monthly Costs
Database Usage and Administration
Routine Maintenance
Administrative (technical, etc.)
Trunkng
Map Updates

CMRS providers are required to submit sworn invoices to the board before reimbursement. Industry officials do not expect to begin submitting invoices until December 1998. Most industry officials expect that the transition to E911 will be gradual over the next three years. The local 911 service must request the enhanced service before the industry can begin upgrading the technology. Sixty percent (60%) of the funds in the Wireless Fund shall be used to reimburse these CMRS providers.

PSAP Costs: A second type of cost associated with enhanced 911 service is to the organization that answers 911 calls. These are referred to in the bill as PSAPs or public safety answering points. At present North Carolina has 258 PSAPs.

According the representatives from the National Emergency Number Association and the Association of Public Safety Communications Officials, the actual cost to upgrade center hardware and software to take enhanced 911 calls will differ dramatically. According to association representatives the cost per center will be between $3,000 and $300,000. The association representatives also note that all PSAPs may not be interested in participating in the program. These PSAPs may determine that it would be more effective to forward the calls to another center, or that the local cellular load does not justify the added expense. Under the bill 40% of the fund revenue is used by the PSAPs.

Phase II Wireless Costs: At this point no cost estimates are available from the industry regarding the potential phase II costs.

Communication Towers: According to the Office of State Construction, the latest revenue estimates from the construction of communications towers comes from the Wake County Budget Office. According to Wake County, the last two towers constructed on land leased by Wake County resulted in revenue of roughly $50,000 ($10,000 per year over five years). Because it is not clear how many towers the state will construct, or the associated timeline, no fiscal impact estimates are possible on this portion of the bill.

Because the vast majority of information surrounding this issue is proprietary, exact start up and maintenance costs are not available. Industry representatives are not able to provide cost information on phase II at this time, as they believe the technology may change substantially by the end of 2001.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps, Dwayne Pinkney
APPROVED BY:
DATE: August 10, 1998

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1242

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1242-ARK-001

Date_____,1998

Comm. Sub. [yes]
Amends Title [no]
Forth Edition

moves to amend the bill on page 4, line 7, by deleting the subsection "(d)" which follows the period at the end of that line; and

on page 4, line 8 by rewriting that line to read:
" (d) Consistent with the provisions of G.S. 143-3.2, the Board shall disburse the revenues".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED __X__ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1242 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Lucas

moves to amend the bill on page 4, line s 17 - 30

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

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

and on page 4, lines 31 - 34, by renumbering the remaining ~~subsections~~ accordingly.

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 642 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Miller
)
Sen.)

moves to amend the bill on page 7, line 28-35

( ) WHICH CHANGES THE TITLE

by deleting those lines; and

on page 7, line 36 by rewriting that line to read:

"§ 62B-11. Misuse of wireless 911 system; penalty."

SIGNED _____

ADOPTED _____ FAILED X TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☒ Committee Substitute for
S.B. 1242 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO ENCOURAGE CO-LOCATION OF SERVICES TO THOSE TOWERS, AND TO MAKE A TECHNICAL CORRECTION TO G.S. 62A-10.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to House committee substitute bill (# 2), ☐ ~~which changes the title~~, unfavorable as to ~~original bill~~ (House Committee Substitute Bill # 1), ~~(and recommendation that the committee substitute bill #) be re-referred to the Committee on)~~

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

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

☐ 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)

VISITOR REGISTRATION SHEET

House Finance — Aug 11, 1998 PM

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Zeb Alley	Sprint
Ben Kuhn	Kilpatrick Stockton
LYNN HOLMES	BELLSOUTH
John Poliszuk	AT&T
Ed Regan	N.C.A.C.C.
Andy Romanet	N.C.L.M.
Brenda Doughety	Sprint
Larry Mathiot	Sprint
Gary Walker	ALLTEL
RICHARD N. TAYLOR	City of New Bern 9-1-1
Andrew R. Gilbert	Wake County Government
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Horse Power
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Otis Carter	Carter + Associates
Marie Smith	Smith + Associates
Chris Jones	GTE Wireless Atlanta GA
Roger Bone	Bone + Assoc
Catherine Davis	Electricities of NC Inc.
W. Potter	NCDOT/NCDMV/DOT
Willie Riddick	DOR
Ruth Sappie	NCDOT
Kevin Howell	NC 317
Brad Adcock	BCBSNC
Bernard Allen	SOS
Jon Mcgee	Moore & Van Allen

VISITOR REGISTRATION SHEET

Horse Farms

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
Chris Valauri	N.C. Beef & Horse Assoc
Jim Wade	Brooks Cole & Stroupe
Jack Zylan	NCBOL

VISITOR REGISTRATION SHEET

House Finance 8/11/98

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Steve Skinner	BellSouth Mobility
Ben Kuhn	Kilpatrick Stockton
[illegible]	WCSR
Meredith Norris	Lawrence Bewley & Assoc.
Steve Woodson	NC Farm Bureau
[illegible] Roy	NCDOT
Larry Mathiot	Sprint
[illegible]	NCACC
[illegible]	WCSR
Mark Benson	Capital Group
Gordon Deer	DOR
[illegible]	DOR

VISITOR REGISTRATION SHEET

House Finance 8/11/98

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Preston Pate	NC Marine Fisheries
Billy David	DOR
Jay Hare	DOR
Richard N. Taylor	City of New Bern 9-1-1
Andrew R. Gilbert	Wake County GIS
Gary Walker	ALLTEL
Bob Wells	The Alliance
Tim Minor	NCHBA
Ed Lega	N.C. Assoc. of Co. Comm
Andy Lomont	N.C.L.M.
John Coleman	AT&T
Brenda Dougherty	Sprint

VISITOR REGISTRATION SHEET

Horse Pasture — 8/11/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Heather Vail	OSA
LYNN HOLMES	BGR SMITH
Leslie Bevacqua	NCCBI
Sandy Sands	WCSR
Jim Ritely	TJA
Patrice Roesler	NCACC
Craig Blackwood	Orange Co. Emergency Mgmt.
Susan B. Brandon	Orange Co. Emergency Mgmt
Jane O. Gray	DOJ
Kate McGuire	NC Ctr for NP
B.K. Scarboro	Good Neighbors

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
ANDY SABOL	DOR
Kim Sabol	DOR
Doug Lassiter	NC S.T.A.
David Knight	NC Sierra Club
Christine Lecca	NCAA
Alicia Gregory	Poyner & Spruill

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1326*
Committee Substitute Favorable 7/6/98
Proposed Committee Substitute H1326-PCSX6864

Short Title: Update IRC Reference/Conform Gift Tax. (Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES FROM FIVE YEARS TO TWENTY YEARS, AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997,~~ August 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. G.S. 105-130.8 reads as rewritten:

"**§ 105-130.8. Net economic loss.**

(a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 20 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to the following limitations:

(1) The purpose in allowing the deduction of a net economic loss of a prior year ~~or years~~ is ~~that of granting~~ to grant some measure of relief to the corporation ~~which~~ that has incurred economic misfortune or ~~which~~ is otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction ~~herein specified~~ allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that ~~such loss or losses shall result~~ the loss results in the impairment of the net economic situation of the corporation so as to result in a net economic loss as ~~hereinafter defined.~~ defined in this section.

(2) The net economic loss for any year ~~shall mean~~ means the amount by which allowable deductions for the year other than prior year losses ~~shall~~ exceed income from all sources in the year including any income not taxable under this Division.

(3) Any net economic loss of ~~a prior year or~~ prior years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that ~~such carry-over~~ the loss carried forward from the prior ~~year or~~ years ~~shall exceed~~ exceeds any income not taxable under this Division received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, ~~as defined in this Division,~~ only ~~such~~ that proportionate part of the net economic loss of a prior year shall be deductible from total income allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of ~~such~~ the loss.

(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the

next succeeding year before any portion of ~~such~~ the loss may be carried forward to a succeeding year.

(5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Division.

(6) No loss shall either directly or indirectly be carried forward more than ~~five~~ 20 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year shall maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The burden of proving eligibility for the deduction and the amount of the deduction shall rest upon the corporation, and no deduction shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection."

Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

"(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the ~~five~~ 20 preceding years pursuant to the provisions of G.S. 105-130.8. ~~Provided, a~~ A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8."

Section 8(a). Sections 6 and 7 of this act are effective for taxable years beginning on or after July 1, 1998, and apply to losses incurred for taxable years beginning on or after July 1, 1992.

Section 8(b). Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1326*
Committee Substitute Favorable 7/6/98

Short Title: Update IRC Reference/Conform Gift Tax. (Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES FROM FIVE YEARS TO TWENTY YEARS, AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997,~~ June 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account

ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. G.S. 105-130.8 reads as rewritten:

"**§ 105-130.8. Net economic loss.**

(a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 20 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to the following limitations:

(1) The purpose in allowing the deduction of a net economic loss of a prior year ~~or years~~ is ~~that of granting~~ to grant some measure of relief to the corporation ~~which~~ that has incurred economic misfortune or ~~which~~ is otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction ~~herein specified~~ allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that ~~such loss or losses shall result~~ the loss results in the impairment of the net economic situation of the corporation so as to result in a net economic loss as ~~hereinafter defined.~~ defined in this section.

(2) The net economic loss for any year ~~shall mean~~ means the amount by which allowable deductions for the year other than prior year losses ~~shall~~ exceed income from all sources in the year including any income not taxable under this Division.

(3) Any net economic loss of ~~a prior year or~~ prior years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that ~~such carry-over~~ the loss carried forward from the prior ~~year or~~ years ~~shall exceed~~ exceeds any income not taxable under this Division received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, ~~as defined in this Division,~~ only ~~such~~ that proportionate part of the net economic loss of a prior year shall be deductible from total income allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of ~~such~~ the loss.

(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of ~~such~~ the loss may be carried forward to a succeeding year.

(5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Division.

(6) No loss shall either directly or indirectly be carried forward more than ~~five~~ 20 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year shall maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The burden of proving eligibility for the deduction and the amount of the deduction shall rest upon the corporation, and no deduction shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection."

Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

"(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the ~~five~~ 20 preceding years pursuant to the provisions of G.S. 105-130.8. ~~Provided, a~~ A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8."

Section 8(a). Sections 6 and 7 of this act are effective for taxable years beginning on or after July 1, 1998, and apply to losses incurred for taxable years beginning on or after July 1, 1992.

Section 8(b). Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1326 (PCS):
Update IRC Reference/Conform Gift Tax

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 30, 1998
SPONSOR: Representative Gray
Recommended by the Revenue Laws Study Committee

House Bill 1326 makes three changes:

1. It rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1997, to August 1, 1998.
2. It conforms to federal gift tax treatment of qualified tuition programs.
3. It extends the carryforward period for corporate net economic losses from five years to twenty years, effective for taxable years beginning on or after July 1, 1998.

Update Code Reference. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State tax law previously tracked federal law. Congress made numerous, significant changes to the Code last year that will affect federal taxable income. This year, it enacted several additional changes that will affect taxable income. Because the State corporate and individual income taxes are based upon federal taxable income, these changes, if adopted, will affect State policies and revenues. The fiscal note and attachments list and summarize the significant changes made by the federal Taxpayer Relief Act of 1997 and the Internal Revenue Service Restructuring and Reform Act of 1998.

One of the federal tax changes enacted last year was an income tax exemption for the annual earnings on amounts contributed to qualified tuition programs, such as North Carolina's Parental Savings Trust Fund, for the future payment of room or board at an institution of higher education. North Carolina law has a provision exempting these earnings to the extent they are taxed under federal law. Because they are no longer taxed under federal law, Section 2 of the bill repeals the North Carolina exemption. Section 3 amends a related North Carolina provision to clarify that it exempts distributions from tax only if they are used for qualified higher education expenses.

Section 5 of House Bill 1326 provides that the recent federal tax law changes that could increase a taxpayer's North Carolina taxable income for the 1997 tax year will not become effective until January 1, 1998. Under Article 1, Section 16 of the North Carolina Constitution, the legislature cannot pass a law that will increase a tax retroactively. There are a number of provisions in the federal Taxpayer Relief Act of

1997 and the Internal Revenue Service Restructuring and Reform Act of 1998 that could increase taxable income for the 1997 tax year. Because the Code Update could not be acted upon until the 1998 Session of the General Assembly, these changes had to be given a delayed effective date.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this one. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law from year to year, the State may not want to adopt automatically all federal changes. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Section 2(1) of Article V of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

The Revenue Laws Study Committee explored the possibility of legislation that would automatically adopt federal changes to the Code each year, with legislative review and approval required in the succeeding legislative session. It was hoped that this approach would avoid the practical difficulties that occur when Code changes go into effect many months before the General Assembly has a chance to pass legislation adopting the changes. The Attorney General's Office reviewed the relevant case law in this State and other states before concluding that this approach would be unlikely to withstand a constitutional challenge.

Qualified Tuition Plan Gift Tax. Section 4 of House Bill 1326 adopts for North Carolina gift tax purposes the provisions of federal law listed below. Conforming to federal law will relieve taxpayers from unexpected gift tax liability and will simplify tax compliance and administration.

1. A distribution from a qualified tuition program is not a taxable gift, unless a new beneficiary, who is a generation below the original beneficiary, is named to the account or receives the account in a rollover.
2. A contribution to a qualified tuition program is a gift to the designated beneficiary, but not a gift of a future interest. If the contribution were considered a gift of a future interest, a gift tax return would have to be filed even if the amount were under the $10,000 annual exclusion amount.
3. A contribution to a qualified tuition program is not a direct payment of tuition. If it were, it would be exempt from gift tax.
4. If a contribution exceeds the $10,000 annual gift tax exclusion amount, the donor may elect to avoid gift tax by treating the contribution as if it had been made over a five-year period. For example, a $25,000 contribution would not be taxable because it would be considered a gift of $5,000 a year over five years and thus would be below the $10,000 annual exclusion amount.

These provisions would apply to any qualified state tuition program under section 529 of the Internal Revenue Code. North Carolina has such a program, known as the Parental Savings Trust Fund. This Fund is part of the State Education Assistance Authority. The Fund is authorized by G.S. 116-209.25, which the General Assembly enacted in 1996. A person can contribute amounts into the Parental Savings Trust Fund for a child who is less than 16 years old. The amount contributed in the account, along with its interest and investment earnings, can be used to pay the expenses of the beneficiary at any accredited public or private college or community college. Either the child or the person making the contributions must be a resident of this State. The Education Assistance Authority opened the Parental Savings Trust Fund in early June, 1998.

Section 529 of the Code excludes the amounts earned on contributions to a qualified state tuition program from federal income tax and, therefore, from North Carolina tax as well. Under federal law, the earnings are exempt if the contributions are for the payment of qualified higher education expenses: tuition, room and board, fees, books, supplies, and equipment. Also under federal law, the amount distributed to a beneficiary of the Parental Savings Trust Fund for qualified higher education expenses is taxable to the extent it exceeds the amount contributed. Thus, under federal law, the tax on the investment earnings is simply deferred until a distribution is made, at which time the earnings are taxable to the beneficiary rather than the contributor. Under North Carolina law, however, the entire distribution is not taxable if it is used for qualified higher education expenses. Under both federal and North Carolina law, earnings distributed for purposes other than qualified higher education expenses are taxable and are also subject to a penalty imposed by the state operating the program.

Corporate Loss Carryforwards. Sections 6 and 7 of the bill would extend the corporate income tax carryforward for net economic loss deductions from five years to twenty years. Twenty years is the carryforward period for the similar net operating loss deduction under the Internal Revenue Code. This part of the bill was not recommended by the Revenue Laws Study Committee but was added by amendment in House Finance. Because it may be difficult for an auditor to substantiate a loss carryforward based on deductions that are ten to twenty years old, the bill clarifies that the corporation has the burden of maintaining records that verify the amount of the loss deduction claimed. Sections 6 and 7 would become effective for taxable years beginning on or after July 1, 1998, and would apply to losses incurred for taxable years beginning on or after July 1, 1992.

A net economic loss is the amount by which a corporation's deductions for a taxable year exceed its income from all sources, including income not taxable by the State. Income not taxable includes income items that are deductible in determining State net income as well as a multi-state corporation's nonbusiness income that is allocable to another state. G.S. 105-130.8 allows a corporation to carry a net economic loss forward and deduct it in the next five succeeding taxable years, but only to the extent the carried forward loss exceeds the amount of any income not taxable for each succeeding year. If the corporation is a multi-state corporation, it may deduct from income allocable to this State only that percentage of the carried forward loss that corresponds to the percentage of the corporation's income allocated and apportioned to this State.

The State's net economic loss provision is apparently based on a similar provision that was in the 1939 Internal Revenue Code. The State originally allowed a two-year carryforward; the carryforward period was extended to five years in 1957.

Even if the carry forward period is extended to match the twenty-year period provided in the Internal Revenue Code, the State calculation will differ from the federal calculation in a number of respects. The Internal Revenue Code of 1954 changed the federal net economic loss deduction to a net operating loss calculation based primarily on revenues and expenditures affecting taxable income. Some limitations and restrictions have evolved in the ensuing years relating to continuity of corporate ownership, corporate equity, successor corporations, and other situations. Of course, under federal law, it is not necessary to address the state income tax issues regarding multi-state corporations whose income is allocable to more than one state. Finally, under federal law, a corporation may elect to carry the federal net operating loss deduction back for two earlier years as well as forward for twenty years.

Internal Revenue Service Restructuring and Reform Act of 1998

The following changes made by the federal IRS Restructuring and Reform Act of 1998, which became law July 22, 1998, will affect North Carolina's tax laws if the reference to the Code is updated to August 1, 1998.

1. Section 3462. Clarify Provisions Relating to Examination and Collection Activities: Offers-in-compromise. This section has no direct impact on the State's tax laws, but the Department of Revenue always considers a federal settlement as one factor when the Department is deciding on how and whether to negotiate a settlement with a taxpayer. The specific changes made by this section, which becomes effective July 23, 1998, are:
   - The IRS Secretary will prescribe guidelines for settlements. The guidelines will include schedules of allowances for basic living expenses and prohibit rejection of a low-income taxpayer's offer solely on the basis of amount.
   - The IRS may not levy while certain offers are pending or while certain installment agreements are pending or in effect.
   - The IRS Secretary will establish procedures for independent administrative review of rejected offers-in-compromise and will publish a statement of taxpayers' rights concerning offers-in-compromise.

2. Section 3711. Offset of Past-Due, Legally Enforceable State Income Tax Obligations Against Overpayments. This section expands the federal setoff debt collection program to include income taxes owed to States. Under this program, if the IRS owes a refund to a taxpayer, it will collect debts owed by the taxpayer by setting them off against the refund and will remit the set-off amount to the creditor. The priorities for this program are IRS debts, child support arrearages, and debts owed federal agencies. State income tax debts will become the fourth priority effective for refunds payable beginning January 1, 2000. Although this change does not affect North Carolina tax law, it will increase North Carolina tax revenues when debts are offset and remitted to the Department of Revenue. The offset program applies only to income tax debts owed by State residents – it will not address the problem of nonresidents who fail to pay income taxes owed to the State. To be eligible for offset, the income tax debt must have been finally determined by a judicial or administrative procedure and the time for appeal must have passed. Before submitting an income tax debt for setoff, the Department of Revenue must notify the taxpayer and give the taxpayer an opportunity to contest the debt.

3. Section 5002. Clarification of Exclusion of Meals for Certain Employees. Under current law, meals furnished to employees on the employer's premises and for the employer's convenience are not taxable income to the employee. This section provides that if the majority of the meals furnished to employees on the employer's premises are for the employee's convenience, then the meals furnished not for the employer's convenience will also be treated as if they were furnished for the employer's convenience (and thus will not be taxable to the employee).

4. Section 7001. Clarification of Deduction for Deferred Compensation. In general, contributions under a deferred compensation plan are deductible by the employer in the year in which the amount is includible in the employee's income (Section 404 of the Code). Vacation pay treated as deferred compensation is deductible by the employer in the year it is paid to the employee. In determining whether an item is considered deferred compensation, if the item is received by the employee within 2 ½ months after the end of the taxable year, it is not deferred. A recent case held that if an employer funded vacation and severance pay by obtaining a letter of credit within that 2 ½ month period, it could deduct the cost because the benefits were considered received by the employee in that period and thus were not deferred compensation. This section clarifies that compensation is not treated as received by an employee, or paid, until actually received by the employee. This clarification will require some employers to change their method of accounting. They will be allowed to spread the resulting adjustments over three years.

5. Section 7002. Freeze Grandfathered Status of Stapled or Paired-share REITS. A REIT is a real estate investment trust. It is an entity that receives most of its income from passive real estate-related investments and does not engage in any active trade or business. It is a pass-through entity whose income is not taxed if distributed to shareholders. In a "stapled" REIT structure, the shares of a REIT and a C Corporation may be traded but not sold separately. In 1984, the tax benefits of this structure were curtailed except for certain pre-existing stapled REITs. This section limits that exception to real property interests acquired on or before March 26, 1998. In general, for interests acquired after that date, the special treatment for pre-existing stapled REITs is eliminated.

6. Section 7003. Make Certain Trade Receivables Ineligible for Mark-to-Market Treatment. Under current law, dealers in securities are required to use a mark-to-market method of accounting for securities. A security is any evidence of indebtedness and a dealer is anyone who regularly buys or sells securities from or to customers in the ordinary course of business. This

section eliminates dealer mark-to-market treatment for evidences of indebtedness arising out of the sale of nonfinancial goods or services by a person whose principal activity is providing non-financial goods or services, if the indebtedness is held by that person or a related party at all times. This change will require some taxpayers to change their method of accounting. They will be allowed to spread the resulting adjustments over four years.

1997 Federal Tax Law Changes

General

The federal Taxpayer Relief Act of 1997 creates 285 new sections in the Internal Revenue Code and amends 824 existing sections. Errors in the act are expected to be corrected in 1998 in the federal Tax Technical Correction Act. The following list summarizes some of the significant provisions of the 1997 legislation.

Affects N.C. Individual Income Tax Only

1. Allows exclusion of $250,000 ($500,000 for joint filers) of capital gain from **sales of residence** occupied by taxpayer as principal residence for two of previous five years. Former rules on rollover and former one-time exclusion are repealed. Effective for sales after 5/6/97. This is a tax increase for those who have more than $250,000/$500,000 in gain, so to that extent it cannot be retroactive. (§ 121)
2. Expands business expense deduction for percentage of **self-employed individuals' health insurance**: effective in 2000, the percentage is increased to 50%, then phased up reaching 100% in 2007. (§ 16(a)(1)(B))
3. Establishes **Roth IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible contributions of up to $2,000 of compensation (limited for those with adjusted gross income above a certain amount). Distributions tax free if contributions made more than five years ago and one of the following applies: (i) taxpayer is over 59 ½ or is dead, (ii) distribution made because of disability, (iii) distribution is for qualifying first-time homebuyer expenses. Existing IRA may be rolled over to Roth IRA, subjecting rolled over amount to tax. If the IRA is rolled over to a Roth IRA in 1998, the tax due may be spread over four years. (§ 408(a))
4. Expands **existing IRAs** by increasing income limits and allowing IRA for spouse of disqualified active participant, effective for taxable years beginning on or after 1/1/98. (§219(g))
5. Establishes **Education IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible cash contributions of up to $500 a year per child under 18 (contributions limited for those with adjusted gross income above a certain amount). Annual earnings of IRA are tax-exempt and distributions are exempt to the extent spent on qualified higher education expenses. (§ 530)
6. Expands **Prepaid Tuition Programs** to include room and board as qualifying expenses, effective retroactively to August 21, 1996. N.C. already exempts these expenses. The act also expands definitions of eligible educational institution and family member, effective 1/1/98 (§ 529(c), (e)).
7. Reenacts exclusion for up to $5,250 of **employer-provided educational assistance**, effective for tax years beginning on or after 1/1/97 and for courses beginning before 6/1/2000. Does not apply to graduate level courses. (§127(d))
8. Allows above the line deduction for up to $1,000 a year of **interest paid on qualified higher education loans**, effective for interest due and paid on or after 1/1/98. The $1,000 annual limit is phased up by $500 a year until it reaches

$2,500 for 2001 and thereafter. Limited to five years of payments, and further limited for taxpayers with AGI above a certain amount. (§ 221)

9. Restricts **penalty for underpayment of estimated income tax**, so that it does not apply if total tax liability less pre-payments is less than $1,000. (N.C. piggybacks this because 105-163.15(f) references section 6654(e) of the Code.) Effective for tax years beginning on or after 1/1/98
10. Makes a small increase in **standard deduction** of individuals who can be claimed as a dependent by another (indexing not adopted), effective for tax years beginning on or after 1/1/98
11. Changes **net operating loss carryback and forward** periods from back 3 years and forward 15 years to back 2 years and forward 20 years, except for individual casualty losses and for farm and small business losses in a disaster area. Effective for tax years beginning on or after August 6, 1997. (Note, we cannot make this effective until tax years beginning on or after 1/1/98, because it is a tax increase.) Although the federal change affects both corporate and individual income tax, in NC corporate does not piggyback net operating loss treatment, so there is no effect on NC corporate income taxes.
12. Increases **charitable mileage rate** from 12¢ to 14¢, effective for tax years beginning on or after 1/1/98
13. Extends expired deduction for fair market value of **stock contributed to private foundation**, effective 5/31/97 (date of expiration) (§ 170(e)(5))
14. Expands rules governing when a **home office** qualifies as the principal place of business, effective for tax years beginning on or after 1/1/99. Note, however, that use of part of residence as home office may restrict availability of capital gain exclusion for residence.
15. Provides that capital gain from sale of certain **qualified small business stock** is not recognized to the extent the proceeds are rolled over into more qualified small business stock within 60 days, effective for sales on or after August 1, 1997.
16. Expands maximum amount of **self-employed 401(k)** contributions that may be made in certain circumstances, effective for taxable years beginning on or after 1/1/98. (§ 402, 408)
17. Provides that if an employee stock ownership plan (**ESOP**) is a shareholder in an S corporation, items of income or loss of the S corporation will not be treated as unrelated business taxable income, contrary to former law.
18. Changes tax treatment of **rural mail carriers' reimbursed mileage**, effective for tax years beginning on or after 1/1/98
19. Expands deferment of **gain from sale of livestock due to drought**, to include flood or other weather-related conditions. Effective for sales and exchanges on or after 1/1/97. (§ 451, 1033)
20. Expands **business meals/entertainment deduction for air transportation employees**, interstate truck and bus drivers, rail road employees, and merchant mariners. Increased from 50% to 55% effective for tax years beginning on or after 1/1/98. Thereafter, phased up 5% every two years to 80% in 2008.
21. Clarifies exclusion for value of **employer-provided parking**, effective for tax years beginning on or after 1/1/98.

22. Increases amount of foreign earned income that can be excluded by **US citizens residing in foreign countries**, effective for tax years beginning on or after 1/1/98, and phased up thereafter.
23. Retroactively excludes from income certain states' **disability payments to former police officers and fire fighters** in 1989, 1990, and 1991. Note: this provision applies only to certain states. If it applies to N.C., the statute of limitations will prevent refunds.
24. Excludes from income government survivor annuities for **slain public safety officers**, effective for tax years beginning on or after 1/1/97
25. Denies nonrecognition of gain when involuntarily converted property is replaced by property acquired from a related party, unless the taxpayer's aggregate gain is $100,000 or less, effective for involuntary conversions after 6/8/97. (§ 1033)
27. Changes from below the line to above the line the deduction for **State and local government official business expenses** relating to service as official, if official is compensated in whole or part on a fee basis. Effective retroactively beginning with 1987 tax year, but does not waive the three-year statute of limitations. (§62(a)(2)(c)).
28. Changes basis recovery method for pension plan payments, 1/1/98. (§72(d)).
29. Simplifies treatment of personal transactions in **foreign currency**, effective 1/1/98.
30. Increases pension full funding limit with 20-year amortization, effective 1/1/99.

Affects Partnerships (N.C. Individual Income Tax)

1. Treats as ordinary income gain attributable to inventory on sale or exchange of partnership interest and in certain partnership distributions, effective 8/5/97. (no impact)
2. Changes formula for allocation of basis among distributed assets of partnership, effective 8/5/97.
3. Extends from 5 to 7 years the period in which a partner may recognize "pre-contribution gain" with respect to contributed property when it is distributed to another partner, or when other property is distributed to the contributing partner, effective for contributions after 6/8/97.

Affects both N.C. Individual and Corporate Income Tax

1. Retroactively extends federal **R&D tax credit**, which had expired 6/1/97. N.C. law piggybacks this credit in G.S. 105-129.10.
2. Restricts types of property eligible for the more generous **income forecast method of depreciation,** effective for property placed in service on or after August 6, 1997. This method will now be allowed only for film, video tapes, sound recordings, copyrights, books, and patents.
3. Eliminates **short against the box** and similar transactions. A taxpayer must recognize gain upon entering into a constructive sale of any appreciated position in stock, etc. A constructive sale occurs if two offsetting positions are acquired in substantial identical property with the intent of reducing the taxpayer's risk

associated with the appreciated property. Gain recognized as if position sold at fair market value and repurchased on date of constructive sale. Effective 6/8/97, with transitional rules. (§ 1259).

4. Requires immediate accrual of interest or original issue discount on **pool of debt instruments** on which the principal can be paid without interest as of a certain date (e.g., credit card receivables) Effective for taxable years beginning on or after 8/5/97. (§1272)
5. Allows expensing of certain environmental remediation costs (**brownfields**) that would otherwise be chargeable to capital account. Effective for expenditures after 8/5/97 and before 2001. (§ 198)
8. Allows **inventory adjustment for estimated shrinkage** if business (1) usually makes a periodic physical count and (2) will later revise the adjustment for discrepancy between estimated shrinkage and actual shrinkage. Effective for tax years ending after 8/5/97. (§471)
9. If taxpayer enters into **short sale of property that becomes substantially worthless**, gain is recognized as if short sale closed when property became worthless. §1233(h). In addition, extends capital treatment of gains and losses under §1234A to interests in real property and nonactively traded personal property.
10. Includes income from **notional principal contracts and stock lending transactions** under Subpart F in gross income of U.S. shareholders, effective 8/5/97. (§ 951)
11. Further restricts like-kind exchanges involving foreign personal property, effective 6/8/97. (§ 1031).
12. Limits treaty benefits for payments to hybrid entities, effective 8/5/97. (§ 894).
13. Creates exception from U.S. property definition under Subpart F for certain securities positions, effective 1/1/98.
14. Exempts active financing income from Subpart F, effective during 1998 only.
15. Modifies look back method for long term contracts, effective 8/5/97.

Affects N.C. Corporate Income Tax Only

1. Recognizes gain when taxpayer exchanges property for certain preferred stock formerly not treated as "**boot**". Sections 351, 354, 355, 356, and 1036 of the Code. Effective transactions after 6/8/97.
2. Certain **corporate contributions of computer** software and equipment to schools qualify for charitable deduction in excess of otherwise applicable limit (basis of the donated property), effective for taxable years beginning on or after 1/1/98 and before 1/1/2001.
3. Repeals income deferral formerly allowed when **family farms** required to change from cash method to accrual method because gross receipts exceed $25 million. Effective for taxable years beginning on or after 7/1/96, with transitional rules.
4. Allows **Subchapter S subsidiaries** (allowed by Small Business Job Protection Act of 1996) to be treated in certain instances as separate corporations for the

purpose of applying Code provisions that benefit a certain type of entity (e.g., banks), that the subsidiary is but the parent is not. Effective 1/1/97

5. Clarifies that **software qualifies as export property** eligible for foreign sales corporation benefits, effective 1/1/98. Piggybacked by 105-130.5(a)(15)
6. Repeals deduction for premiums paid on life insurance policy or annuity in which taxpayer had an interest. Repeals deduction for **interest paid to incur life insurance coverage** where taxpayer is beneficiary and restricts deduction for taxpayer's interest expense allocable to certain cash surrender values. Also, provides pro rata disallowance of interest expense attributable to life insurance on individuals who are not officers, employees, or former employees. Effective 6/8/97.
7. Requires recognition of gain in year of extraordinary dividend if the nontaxed portion of the dividend exceeds the stock basis, and other changes. Depending on the type of extraordinary dividend, new rules effective for distributions after 5/3/95 or 9/13/95, with transition rules. .
8. Repeals law allowing manufacturers to use installment method to report income from sales to their dealers, effective for taxable years beginning on or after 8/6/98.
9. Expands circumstances in which gain is recognized upon acquisition or distribution of stock of the controlled corporation or distributing corporation, effective for transactions occurring after April 16, 1997. This change substantially restricts the availability of tax-free spinoffs. Also, effective for transfers after 6/8/97, gain recognition on transfers to investment companies expanded by expanding definition of investment company.
10. Denies **interest deduction on convertible debt** and similar debt, effective for instruments issued on or after 6/8/97. (§163(l))
11. Allows deferral of gain on sales of stock of certain corporations engaged in refining or processing agricultural products to farmers' cooperatives engaged in marketing agricultural products, effective 1/1/98. .
12. Modifies control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations, effective 1/1/99.
13. Repeals 30% gross income limitation for regulated investment companies, effective 8/5/97.

Affects Other NC Taxes

1. Extends **generation-skipping transfer tax** exemption to transfers to grandnieces and nephews where parent of transferee is deceased and transferor has no living lineal descendants at time of transfer, effective 1/1/98. (§ 2651, 2612) (We piggyback in G.S. 105-7.1.)

No Effect on N.C.

1. Allows $500 **child tax credit** ($400 in 1998). Phased out if AGI above $110,000 joint or $75,000 single/head of household

2. **Allows Education tax credits.** (1) Hope credit for portion of qualified undergraduate education tuition and fees for two years, phased out for taxpayers with AGI over certain amounts. Effective 1/1/98. (2) Lifetime learning credit for 20% of qualified undergraduate or graduate tuition, subject to cap, phased out for taxpayers with AGI over certain amounts. (§25A, 6050S)
3. **Lowers individual tax rate on capital gains.** Rate reduced from 28% to 20%. For taxpayers in 15% bracket, it is 10%. Holding period for LTCG expanded from one year to 18 months.
4. **Work opportunity tax credit** extended and expanded. New welfare to work tax credit for part of employers' wages paid to AFDC recipients, effective 1/1/98. (§ 51A)
5. Allows penalty-free (but not tax free) withdrawals from IRAs for qualified higher education expenses and first time home purchase.
6. Three-year **income averaging for farmers**, effective for 1998, 1999, and 2000 tax years. (§1301)
7. Increases **estate and gift tax unified credit** to $625,000 in 1998, $650,000 in 1999, $675,000 in 2000-01, $700,000 in 2002-03, $850,000 in 2004, $950,000 in 2005, and $1 million in 2006+
8. Reduces estate tax for land subject to permanent conservation easement, effective 1/1/98.
9. Allows **estate tax exclusion for qualified family owned business**, effective 1/1/98. This is very complex and can be narrow in its application.
10. Alternative minimum tax repealed for small corporations.
11. Alternative minimum tax depreciation adjustment eliminated for property placed in service on or after 1/1/99.
12. Farmers may use installment method of accounting for purposes of alternative minimum tax.
13. Taxpayer who fraudulently claims **earned income tax credit** is ineligible thereafter for 10 years. Also, change in definition of AGI for purpose of phasing out the EITC, effective 1/1/98.
14. Changes safe harbor test applicable to upper income individuals for purposes of penalty for underpayment of estimated taxes. We do not piggyback this. (§6654)
15. Tightens holding period rules for corporate dividends received deduction.
16. Those offering tax shelters must register with the IRS.
17. Orphan drug tax credit made permanent.

Technical/Minor - Probably Tiny Impact if Any

1. Clarifies that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance, as long as the employer does not provide long term health insurance.
2. Recaptures all depreciation (not just excess over straight line) on § 1250 property (buildings).
3. Clarifies that medical savings account withdrawals must be for an individual who was eligible (not covered by low deductible health plan) in the month the expenses were incurred.

4. Estate and its beneficiary treated as related parties for purpose of disallowing loss deduction for sales of assets to related parties and disallowing capital gains treatment for sales of depreciable property to related parties. Effective for taxable years beginning after 8/5/97. (§ 267, 1239)
5. Luxury auto depreciation limits relaxed for clean-burning fuel vehicles and electric vehicles, effective for property placed in service between 8/5/97 and 1/1/05. (§280F).
6. Employer may deduct contributions to SIMPLE 401(k) with no 15% limit, effective for taxable years beginning on or after 1/1/97. (§404(a)(3)(A))
7. Securities traders and commodity traders and dealers may elect mark to market accounting rules (previously applied only to securities dealers), effective for taxable years beginning after 8/5/97
8. Exclude from corporate unrelated business income tax income from certain corporate sponsorship payments .
9. Change treatment of travel expenses of certain federal employees engaged in criminal investigations, effective 8/5/97.
10. Changes rule for closing partnership taxable year with respect to a deceased partner, effective 1/1/98.
11. Allows deduction for contributions by ministers to retirement plans, effective 1/1/98.
12. Clarifies that **employer-provided employee meals** that are tax-free to the employee because they are for the convenience of the employer are fully deductible by employers and treated as de minimum fringe benefits effective for taxable years beginning on or after 1/1/97.
13. MedicarePlus Choice Medical Savings Accounts authorized as pilot program for individuals on Medicare, effective for taxable years beginning on or after 1/1/99. (§138, 220(b), 4973(d)).
14. Reduces **carryback period for general business credits** (such as R&D and low-income housing credits) from 3 years to 1 year, with carryforward period extended from 15 years to 20 years, effective for credits for which the taxpayer first becomes eligible in taxable years beginning on or after 1/1/98. Our R&D credit piggybacks the federal credit, and also some addbacks are allowed under our law if the taxpayer was disallowed a federal deduction for a credit for which we have no corresponding credit. (§ 39)
15. Repeals 30% gross income requirement for **real estate investment trusts**.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1326 Second Edition (Proposed Finance Committee Substitute)
SHORT TITLE: Update IRC Reference/Conform Gift Tax
SPONSOR(S): Rep. Gray, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($ Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
GENERAL FUND					
IRC Update	($6.97)	($4.01)	($10.70)	($18.53)	($33.64)
Net Economic Loss Carryforward		($16.00)	($16.00)	($16.00)	($16.00)
Total	($6.97)	($20.01)	($26.70)	($34.53)	($49.64)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Section 4 (Qualified Tuition Programs) becomes effective for taxable years beginning on or after January 1, 1998. Sections 6 and 7 (net loss carryforward) are effective for taxable years beginning on or after July 1, 1998, and apply to losses incurred for taxable years beginning on or after July 1, 1992. The remainder of the act is effective when it becomes law.

BILL SUMMARY: The act (1) updates the reference to the Internal Revenue Code used in defining and determining certain state tax provisions (from January 1, 1997 to June 1, 1998), (2) conforms to federal gift tax treatment of contributions to qualified tuition programs, and (3) extends the corporate income tax carryforward for net economic losses from five years to twenty years.

BACKGROUND: Each year the General Assembly changes the reference date in the definition of the Internal Revenue Code used in the state individual and corporate income tax statutes. Congress made hundreds of changes in the Code with the passage of the Taxpayer Relief Act of 1997. These changes were reviewed by the Revenue Laws Study Committee and were recommended to the 1998 General Assembly with a few exceptions. Those tax law changes that affect the 1997 tax year cannot be adopted by North Carolina until 1998, because the state constitution prohibits enacting a retroactive tax increase.

Congress recently approved and the president signed the Internal Revenue Service Restructuring and Reform Act of 1998. This act made additional changes in both individual and corporate income tax laws that have a positive impact on the state General Fund.

ASSUMPTIONS AND METHODOLOGY:

IRC Update

North Carolina estimates on updating the Internal Revenue Code reference are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is North Carolina's actual tax collections divided by national tax collections. (individual = .723% and corporate = .542%.) The charts on the following pages show the fiscal impact of the major federal tax changes on the state's General Fund.

Qualified Tuition Program

As for the gift tax change on qualified tuition programs, there should be little or no revenue loss to the state. The newly created College Vision Fund, administered by the State Education Assistance Authority, is designed for middle income taxpayers who save an average of $125 a month for their children's college education. While gifts exceeding $10,000 may be accepted by the fund, such contributions are not the norm. Those with the means to give more than $10,000 per year will probably invest in college trust funds bearing interest greater than the interest paid by the State Treasurer on the investments in the College Vision Fund.

Net Economic Loss Carryforwards

The Tax Research Division of the Department of Revenue estimates that extending the corporate income tax carryforward for net economic losses from five years to 20 years will cause a **revenue loss in the General Fund from $8 million to $16 million per year**. This estimate was based on corporate income tax returns from 1994 when 36,780 nontaxable corporations had $10.1 billion in unexpended net economic loss carryforwards. The Department could not be more precise due to the volatility of corporate taxable income and the lack of information concerning "expired" losses. The Department confirmed this estimate by reviewing a small sample of 1996 returns.

Since this section is effective for taxable years on or after July 1, 1998, it is assumed that the majority of corporations will file their annual returns three months and 15 days after the close of their fiscal year on June 30, 1999. This would put the first year revenue loss in FY 1999-00. There will be some short period returns filed due to mergers and other reasons, but there is no data to determine how many might occur in FY 1998-99. For the fiscal note, the high end of the range ($16 million) is used to be conservative in estimating budget availability in future fiscal years.

INTERNAL REVENUE CODE UPDATE

STATE IMPACT

Taxpayer Relief Act of 1997	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Individual Income Tax Only						
Exclude capital gain from sale of residence	5/6/97	-3.62	-3.62	-3.62	-4.34	-4.34
Expand deduction for self-employed individuals' health insurance	2000	-	-0.28	-0.87	-1.62	-4.37
Establish Roth IRAs/Expand existing IRAs	1/1/98	-2.49	0.62	-2.50	-6.22	-13.23
Establish education IRAs	1/1/98	-4.66	-6.59	-7.66	-8.14	-10.47
Add room and board as qualifying expenses for Prepaid Tuition Programs	8/21/96	No impact - NC already exempts these expenses				
Reenact employer-provided educational assistance	1/1/97	-2.67	-1.81	-	-	-
Allow deduction of interest paid on qualified higher education loans	1/1/98	-0.50	-0.88	-1.47	-2.00	-2.23
Restrict penalty for underpayment of estimated income tax	12/31/97	-0.12	-0.13	-0.14	-0.14	-0.15
Increase standard deduction for individuals claimed as dependent by another	1/1/98	-0.27	-0.25	-0.25	-0.25	-0.25
Change net operating loss carryback and forward periods	1/1/98	0.22	0.26	0.19	0.13	0.10
Increase charitable mileage rate from 12 cents to 14 cents	1/1/98	-0.40	-0.42	-0.44	-0.46	-0.49
Extend deduction for FMV of stock contributed to private foundation	6/1/97	-0.07	-0.03	-	-	-
Expand rules on home office as principal place of business	1/1/99	-0.86	-1.76	-1.83	-1.90	-1.98
Exclude capital gain from sale of qualified small business stock	8/1/97	-0.36	-0.36	-0.36	-0.36	-0.36
Increase maximum amount of self-employed 401(k) contributions	1/1/98	No estimate available				
Modify tax treatment of Employee Stock Ownership Plans (ESOP) in S corporations	12/31/97	-0.17	-0.25	-0.30	-0.32	-0.33
Change tax treatment of rural mail carriers' reimbursed mileage	1/1/98	-0.01	-0.01	-0.01	-0.01	-0.01
Defer gain from sale of livestock due to drought, flood or other weather related event	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Expand business meals/entertainment deduction for air transportation employees, truck drivers, railroad employees, and merchant marines	1/1/98	-0.12	-0.20	-0.27	-0.35	-0.45

Taxpayer Relief Act of 1997 (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Individual Income Tax Only						
Clarify exclusion of the value of employer-provided parking	1/1/98	0.06	0.08	0.09	0.09	0.09
Increase exclusion of income earned by US citizens residing in foreign countries		-0.22	-0.36	-0.48	-0.59	-0.70
Exclude from income the disability payments to former police officers and fire fighters retroactive to 1989, 1990, and 1991		-	-	-	-	-
Exclude from income government survivor annuities to slain public safety officers	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Deny nonrecognition of gain of involuntarily converted property	6/8/97	0.03	0.04	0.06	0.08	0.09
Provide an above the line deduction for state and local officials' expenses	1/1/87	-0.03	-0.03	-0.03	-0.04	-0.04
Change basis recovery method for pension plan payments modified	12/31/97	0.02	0.04	0.07	0.08	0.11
Simplify treatment of personal transactions in foreign currency	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Increase full funding limit with 20 year amortization for pensions	12/31/98	-0.03	-0.09	-0.10	-0.13	-0.14
Affects Partnerships (Individual Income Tax)						
Classify sale or exchange of inventory in partnership as ordinary income	8/5/97	No impact - NC already taxes as ordinary income				
Change formula for allocation of basis among distributed assets of partnership	8/5/97	0.38	0.40	0.41	0.43	0.44
Extend period from 5 to 7 years for recognition of precontribution gains	6/8/97	-	-	-	0.01	0.07
Affects both Individual and Corporate Income Tax						
Extend R&D tax credit retroactive to 6/1/97	6/1/97	Costs included in the Bill Lee act				
Restrict income forecast method of depreciation	8/6/97	0.30	0.45	0.56	0.27	0.20
Eliminate short against the box transaction for stock	6/8/97	0.87	0.49	0.53	0.57	0.61
Require immediate accrual of interest on pool of debt instruments	8/5/97	1.99	2.59	2.31	2.05	0.72
Allow expensing of certain environmental remediation costs for brownfields	8/5/97	-0.95	-1.19	-0.46	0.00	0.01
Allow inventory adjustment for estimated shrinkage	8/5/97	-0.15	-0.17	-0.18	-0.20	-0.21
Change gain recognition rules under sections 1233 and 1234A of the Internal Revenue Code	8/5/97	0.20	0.18	0.18	0.18	0.18

Taxpayer Relief Act of 1997 (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Both Individual and Corporate License Tax						
Include income from notional principal contracts and stock lending transactions in gross income of U.S. shareholders	8/5/97	0.14	0.15	0.15	0.15	0.15
Restrict like-kind exchanges involving foreign personal property	6/8/97	0.06	0.08	0.09	0.11	0.12
Limit treaty benefits for payments to hybrid entities	8/5/97	0.01	0.01	0.01	0.01	0.01
Exempt certain securities positions from U.S. property definition under subpart F	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Exempt active financing income from subpart F	1998	-0.49	-0.02	0.00	0.00	0.00
Modify look-back method for long term contracts	8/5/97	-0.01	-0.02	-0.03	-0.03	-0.03
Affects Corporate Income Tax Only						
Recognize gain from exchange of property for preferred stock treated as boot	6/8/97	0.20	0.21	0.22	0.23	0.05
Expand charitable deduction for corporate contributions of computer software and equipment	1/1/98	-0.26	-0.42	-0.27	-0.03	-0.01
Repeal income deferral when farms change from cash method to accrual method	7/1/96	0.18	0.19	0.20	0.20	0.21
Allow Subchapter S subsidiaries to be treated as separate corporations	1/1/97	No estimate available				
Clarify that software qualifies as export property	1/1/98	-0.23	-0.79	-0.94	-0.98	-1.04
Restrict corporate deductions relating to life insurance	8/6/98	0.29	0.50	0.76	1.05	1.34
Require recognition of gain from extraordinary dividend and other changes	9/13/95	-0.50	-0.29	-0.05	0.24	0.42
Repeal law allowing manufacturers to use installment method to report sales to their dealers	8/6/98	0.24	0.53	0.57	0.57	0.35
Require gain recognition on certain distributions of controlled corporation stock and change tax treatment of redemptions involving related corporations	6/8/97	1.37	1.20	1.04	0.88	0.73
Deny interest deduction on convertible debt	6/8/97	0.09	0.16	0.23	0.30	0.34
Defer gain allowed on sales of stock of certain corporations engaged in refining or processing agricultural products to farmer cooperatives engaged in marketing agricultural products	12/31/97	-0.37	-0.03	-0.03	-0.02	-0.02
Modify control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations	12/31/98	0.00	0.00	0.02	0.03	0.03
Repeal 30% gross income limitation for regulated investment companies	8/5/97	-0.12	-0.15	-0.18	-0.21	-0.24

Taxpayer Relief Act of 1997 (Continued)	**Effective Date**	**98-99**	**99-00**	**00-01**	**01-02**	**02-03**
				($Millions)		
Affect Other NC Taxes						
Extend generation-skipping transfer tax exemption to grandnieces and grand nephews	1/1/98	-0.03	-0.03	-0.03	-0.03	-0.03
IRS Restructuring and Reform Act of 1998						
Individual & Corporate						
Clarify provisions relating to examination and collection activities; Offers-in- compromise	Generally 7/23/98	--	0.07	0.03	0.03	0.03
Authorize the Federal government to offset a Federal Income Tax refund to satisfy a past-due, legally owing state income tax debt	1/1/00		Gain, but no estimate available			
Clarifies the exclusion of meals provided for the convenience of employees on employer's premises	upon enactment	-0.11	-0.18	-0.18	-0.19	-0.20
Overrule Schmidt Baking with respect to vacation pay and severance and other types of compensation, with three year spread	1/1/98	4.55	5.40	2.47	1.67	0.85
Freeze grandfathered status of Stapled or Paired-Share REITS	1/1/98	0.01	0.02	0.03	0..05	0.08
Make certain trade receivables ineligible for Mark-to-Market Treatment	1/1/98	1.72	2.71	1.80	0.63	0.38
TOTAL - IRC UPDATE		**-6.97**	**-4.01**	**-10.7**	**-18.53**	**-33.64**

Taxpayer Relief Act of 1997 - Other Provisions	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Gift Tax						
Treat contributions in excess of $10,000 to state pre-paid tuition plans as being made ratably over a five year period	1/1/98		Negligible revenue effect			
Technical/Minor Impact						
Clarify that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance			No estimate available			
Recapture all depreciation on section 1250 property			No estimate available			
Clarify that medical savings account withdrawals are for individual who was eligible in the month the expenses were incurred			No estimate available			
Treat estate and its beneficiaries as related parties for purpose of disallowing loss deduction for sales of assets	8/5/97		Negligible revenue effect			
Relax luxury auto depreciation limits for clean burning fuel vehicles and electric vehicles	8/5/97	-0.01	0.00	0.00	0.00	0.00
Allow employer deduction for contributions to SIMPLE 401(k) with no 15% cap	1/1/97					
Allow securities traders and commodity traders and dealers to elect mark to market accounting rules	8/5/97		No estimate available			
Exclude from unrelated business tax income certain corporate sponsorship payments	12/31/97		Negligible revenue effect			
Change treatment of travel expenses of certain federal employees engaged in criminal investigations	8/6/97		No revenue impact			
Close partnership taxable year with respect to deceased partner	12/31/97		No revenue impact			
Deduct contributions made by ministers to retirement plans	12/31/97		Negligible revenue effect			
Clarify tax-free employer-provided employee meals	1/1/97		No revenue impact			
Authorize MedicarePlus Choice Medical Savings Accounts pilot program	1/1/99		No estimate available			

Taxpayer Relief Act of 1997 (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Reduce carryback period for general business credits, but increase carry forward	1/1/98		Negligible revenue effect			
Repeal 30% gross income requirement for real estate investment trusts	8/5/97		Negligible revenue effect			

NOTES:

1) North Carolina estimates are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is N.C. actual tax collections divided by national tax collections. (Individual = .723% Corporate = .542%)

2) The North Carolina constitution prohibits enacting a retroactive tax increase, so this bill cannot adopt federal revenue increasing items for the 1997 tax year. This chart assumes that half of the revenue gained from tax increases in 1997 will be received by the Department in Tax Year 1998.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington
DATE: August 3, 1998

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1326

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1326-ALC-1 Page 1 of __

Date_____,1998

Comm. Sub. [YES]
Amends Title [YES]
PCSX6864

Representative Hackney

moves to amend the bill on page 1, line 6,
by adding after the phrase "YEARS," the phrase "TO ALLOW AN INCOME TAX DEDUCTION FOR EMPLOYEES' PAYMENTS TO THEIR EMPLOYERS FOR PARKING,";

and on page 3, lines 23-24,
by adding the following between the lines:
"Section 8. G.S. 105-134.6(b) is amended by adding a new subdivision to read:
'(15) The amount the taxpayer paid during the taxable year to the taxpayer's employer for parking provided by the employer.'";

and on page 3, lines 24 and 27,
by renumbering the remaining section accordingly;

and on page 3, line 28,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1326

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1326-ALC-1 Page 2 of __

by adding after the phrase "1998", the phrase "Section 8 of this act is effective for taxable years beginning on or after January 1, 1999".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1326*
Committee Substitute Favorable 7/6/98
Proposed Committee Substitute H1326-PCSX6461

Short Title: Update IRC Reference/Conform Gift Tax. (Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES FROM FIVE YEARS TO TWENTY YEARS, TO ALLOW AN INCOME TAX DEDUCTION FOR EMPLOYEES' PAYMENTS TO THEIR EMPLOYERS FOR PARKING, AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997,~~ August 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. G.S. 105-130.8 reads as rewritten:

"**§ 105-130.8. Net economic loss.**

(a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 20 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to the following limitations:

(1) The purpose in allowing the deduction of a net economic loss of a prior year ~~or years~~ is ~~that of granting~~ to grant some measure of relief to the corporation ~~which~~ that has incurred economic misfortune or ~~which~~ is otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction ~~herein specified~~ allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that ~~such loss or losses shall result~~ the loss results in the impairment of the net economic situation of the corporation so as to result in a net economic loss as ~~hereinafter defined.~~ defined in this section.

(2) The net economic loss for any year ~~shall mean~~ means the amount by which allowable deductions for the year other than prior year losses ~~shall~~ exceed income from all sources in the year including any income not taxable under this Division.

(3) Any net economic loss of ~~a prior year or~~ prior years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that ~~such carry-over~~ the loss carried forward from the prior ~~year or~~ years ~~shall exceed~~ exceeds any income not taxable under this Division received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, ~~as defined in this Division,~~ only ~~such~~ that proportionate part of the net economic loss of a prior year shall be deductible from total income allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of ~~such~~ the loss.

(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the

next succeeding year before any portion of ~~such~~ the loss may be carried forward to a succeeding year.

(5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Division.

(6) No loss shall either directly or indirectly be carried forward more than ~~five~~ 20 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year shall maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The burden of proving eligibility for the deduction and the amount of the deduction shall rest upon the corporation, and no deduction shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection."

Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

"(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the ~~five~~ 20 preceding years pursuant to the provisions of G.S. 105-130.8. ~~Provided, a~~ A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8."

Section 8. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(15) The amount the taxpayer paid during the taxable year to the taxpayer's employer for parking provided by the employer."

Section 9(a). Sections 6 and 7 of this act are effective for taxable years beginning on or after July 1, 1998, and apply to losses incurred for taxable years beginning on or after July 1, 1992.

Section 9(b). Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. Section 8 of this act is effective for taxable years beginning on or after January 1, 1999. The remainder of this act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1326 A BILL TO BE ENTITLED AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES FROM FIVE YEARS TO TWENTY YEARS, AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

x With a favorable report as to committee substitute bill # 2, which changes the title, unfavorable as to Committee Substitute Bill # 1.

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

House Finance — Aug 5, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Don Roy	NC DOT
Patti Seawell	NC DOR
R E McEvoy	Georgia-Pacific
[illegible] Walker	ALLTEL
Lynn Wilson	SEANC
R. Paul White	NCMBA
Greg Radford	NCDOR
John Phelps	NC League of Municipalities
Keith Hartman	NC DOR
Jay Hall	NCDOR
Ken Howell	NCBA
Mike Cowell	NCAA

VISITOR REGISTRATION SHEET

House Finance — 8/5/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jim [illegible]	NCAFT
Doug Miskew	IBM
David Simmons	ZPA, PA
V C McBride	NCDOT
Tim Minton	NCHBA
[illegible] Regan	N.C.A.C.C
Paul Stocks	NC Bankers Assn.
[illegible]	[illegible]
H.H. Webb	Local
Fran Perry	Capital Group
Esthelene Davis	Electricities of NC Inc.
Sam Johnson	AT&T

VISITOR REGISTRATION SHEET

Horse Issues — 8/5/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Amy Fullbright	Hunton & Williams
Willa Riddell	DSR
Tommy Hamrick	Hamrick Cons
Stacey Vaughts	Intern

EXPLANATION OF SENATE BILL 873 (3rd Edition):
Local Government Debt Approval

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 28, 1998
SPONSOR: Senator Kerr

Senate Bill 873 extends the requirement of Local Government Commission approval to certain local government debt not now subject to approval by the Local Government Commission (LGC). The LGC would be required to approve the debt if it found that the amount is not excessive, that the entity operating the project and the entity issuing, securing, or incurring the debt demonstrate financial responsibility, and that the proposed date and manner of sale will not have an adverse affect on any other anticipated sale of State or local obligations. The bill applies to the few types of debt that are not now generally subject to LGC approval, but does not apply to debt that, because of its small size or other similar characteristics, is specifically exempted from LGC approval under current law.

Virtually all bonds, installment purchase contracts, and other debt arrangements that local governments may enter into must be approved by the Local Government Commission. The LGC was created in the early 1930s in response to local government bond defaults resulting from the depression. The LGC provides assistance and oversight to assure that proposed financings are fully understood by the local officials and are fiscally sound. In evaluating proposed projects, the LGC considers whether the operator of the project and the unit obligating itself for the debt can demonstrate the financial capability to fulfill their obligations. In general, the LGC is required to approve proposed debt if all of the following conditions are met:[1]

1. The debt is necessary or expedient.
2. The amount is adequate and not excessive.
3. The local government has good debt management practices.
4. In the case of general obligation debt and installment purchase contracts, that an excessive increase in taxes will not be required. In the case of revenue bonds, that the project that will generate revenues to pay the debt is feasible.
5. That the proposed debt can be marketed at reasonable interest costs.

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[1] G.S. 159-52, 159-86, 159-151.

There are a two types of debt for which Local Government Commission approval is not specifically required: local housing debt and debt issued by a nonprofit corporation on behalf of a local government. As explained below, these are not specific exceptions to the approval requirement enacted by the General Assembly. Instead, they are situations that have evolved independently and do not reflect a policy judgment by the General Assembly that LGC approval should not be required.

These situations represent loopholes enabling local units to issue debt that the LGC considers unsound. The standards for LGC approval are not unduly strict. Failure to obtain LGC approval may be due to a lack of security for the debt. If a local government uses one of these loopholes to issue less secure debt without LGC approval, the resulting risks of default will have a negative effect on the bond ratings or the debt interest cost of all local governments in North Carolina.

Local Housing Debt. Local Government Commission approval is not required for debt of local housing authorities or of local governments exercising the powers of local housing authorities. Chapter 157 of the General Statutes authorizes the creation of local housing authorities. This law, enacted in 1935, is apparently based on a model act. The law was originally enacted to enable local housing authorities to act as conduits for federal housing funds. The authority issued the bonds for housing projects it owned and operated. Housing subsidy payments by the federal government to the authority effectively provided federal government backing for the bonds. For these reasons, a LGC approval requirement was not added to the law. In the late 1980s, however, the situation changed. First, local housing authorities were granted expanded authority to provide low-income and moderate income-housing.[2] Then, the federal funds that supported housing projects were phased out. In search of a new mission, some local housing authorities have looked to issuing tax-exempt bonds for private developers. Without the backing of the federal government and without any requirement for Local Government Commission approval, some of these bonds may not be as secure as other North Carolina local bonds.

The housing bond problem is compounded by the fact that G.S. 160A-456 and G.S. 153A-376 grant counties, cities, and towns the authority to exercise the statutory powers of local housing authorities. Under general law, a county or city can finance housing with bonds or installment purchase contracts, subject to approval by the Local Government Commission. If its proposed project is too risky to be approved, however, it can issue the bonds through the authority granted to local housing authorities under Chapter 157 of the General Statutes. This loophole creates the potential for a local government bond default.

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[2] Chapter 464 of the 1987 Session Laws.

Nonprofit Corporate Agent Debt. The other type of local debt for which Local Government Commission approval is not required is debt issued on behalf of a local government by a nonprofit corporation. The Internal Revenue Service ruled in 1963[3] that bonds issued by such a nonprofit corporation may be tax-exempt if the income and property of the corporation will revert to the local government, and certain other requirements for tax exemption are satisfied. The debt issued is not the debt of the local government but of the nonprofit corporation. Some bond attorneys believe that, as an agency of the local government, the nonprofit corporation must comply with the restrictions, such as LGC approval, that apply to the government. Other bond attorneys, however, take the view that the nonprofit corporation is subject only to the rules applicable generally to nonprofit corporations under Chapter 55A of the General Statutes and need not seek LGC approval before issuing debt. Thus, if the LGC turns down a proposed local government financing because it is too risky, the local government can use a nonprofit corporation to go ahead with the debt. These nonprofit corporations are generally given names that make them sound like government or quasi-government agencies, such as "City of X Financing Assistance Corporation." As a result, although any default would technically be by the corporation and not the local government, in the marketplace, the default is likely to be considered a default by a local government unit. This perception will damage the reputation of North Carolina local governments in general.

Exceptions to Approval Requirement. Except in the cases noted above, all local government bonds are subject to approval by the Local Government Commission. The current law[4] provides an exemption from the LGC approval requirement, however, for non-bond debt in specific situations. This bill will not affect those exemptions. These exemptions are:

1. Obligations for a period of less than five years.
2. Debts that are less than $500,000 or 1/10 of 1% of the local unit's property tax base, whichever is less.
3. Contracts between a unit of local government and the State or the United States, entered into as a condition of a grant or loan to the local unit.
4. Financing of motor vehicles or voting machines.

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[3] Rev. Ruling 63-20.

[4] G.S. 159-148. Although G.S. 159-148 also exempts financing from the Solid Waste Management Loan Program in Chapter 159I of the General Statutes, these agreements are subject to LGC approval under G.S. 159I-12.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: Senate Bill 873 (Proposed Senate Finance Comm. Sub.)
SHORT TITLE: Local Government Debt Changes

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The Local Government Commission of the Department of State Treasurer.

EFFECTIVE DATE: Applies to debt and financing arrangements incurred, entered into, approved, or participated in on or after the date the bill becomes law.

BILL SUMMARY: Extends the requirement of Local Government Commission approval to certain local government debt that is not currently subject to Commission approval.

ASSUMPTIONS AND METHODOLOGY: A discussion with Bob High of the Local Government Commission indicated that the LGC by law can charge fees for work incurred in approving a local debt issue and that the LGC intends to establish fees sufficient to recover full costs.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: July 28, 1998

AGENDA

COMMITTEE ON FINANCE

TUESDAY, AUGUST 4, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Wilson

BILLS FOR DISCUSSION:

HB-1272	No Fee for Purple Heart Plate	Rep. Rayfield
HB-1326	Update IRC Ref/Conform Gift Tax	Rep. Gray
SB-873	Local Government Debt Changes	Sen. Kerr

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1272
Committee Substitute Favorable 6/22/98

Short Title: No Fee for Purple Heart Plates. (Public)

Sponsors:

Referred to:

May 13, 1998

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE FEE FOR PURPLE HEART REGISTRATION PLATES AND TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO REDESIGN THE PURPLE HEART PLATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00
Personalized	$20.00

Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

Section 2. The Division of Motor Vehicles shall complete a redesign of the Purple Heart special license plate by January 1, 1999. The Division shall consult interested groups and other state divisions of motor vehicles about the design to ensure that the plate accurately reflects the appearance of the Purple Heart award. The Division shall use funds already appropriated to the Division to fund the design.

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

EXPLANATION OF HOUSE BILL 1272:
No Fee for Purple Heart Plates (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 3, 1998
SPONSOR: Representative Rayfield

House Bill 1272 does two things:

- It removes the $10.00 additional fee to obtain a Purple Heart special registration plate.
- It directs the Division of Motor Vehicles to redesign the Purple Heart registration plate by January 1, 1999.

The current fee for this special registration plate, as well as other special registration plates, is the regular motor vehicle registration plate fee plus an additional $10.00. The only exception to this rule is the special registration plate issuable to active members of the national guard - this plate may be obtained by paying only the regular motor vehicle registration plate fee. There are 3 plates that are issued free of both the regular motor vehicle registration plate fee and the additional special plate fee: the Congressional Medal of Honor plate, 100% disabled veteran plate, and ex-prisoner of war plate. There are also some special registration plates that cost more than the additional $10 fee. These plates are the ones designed to raise money for a particular group.

In all cases, $10.00 of the additional fee charged for special registration plates is credited to the Special Registration Plate Account. This uniform system of fees has been in place since 1991 when a study commission recommended that the special registration plate system be simplified through a uniform fee schedule. After deducting the cost of the plates from this account, the money is distributed quarterly as follows:

Percentage	Purpose
33%	Department of Commerce for advertising travel and tourism and industrial development
50%	Department of Transportation for beautification of highways
17%	Department of Human Resources to promote Travel accessibility for disabled persons

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1272

SHORT TITLE: No Fee for Purple Heart Plates

SPONSOR(S): Representative Rayfield

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Highway Fund					
Special Registration Plate Account	($27,820)	($27,820)	($27,820)	($27,820)	($27,820)
EXPENDITURES					
Highway Fund					
Highway Beautification	($13,910)	($13,910)	($13,910)	($13,910)	($13,910)
General Fund					
1)Dept. of Commerce	($9,181)	($9,181)	($9,181)	($9,181)	($9,181)
2)Dept. of HHS	($4,729)	($4,729)	($4,729)	($4,729)	($4,729)
G.F. net change	($13,910)	($13,910)	($13,910)	($13,910)	($13,910)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation - Division of Motor Vehicles, Department of Commerce, Department of Health and Human Services

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY: This bill eliminates the additional $10 fee for Purple Heart registration plates.

ASSUMPTIONS AND METHODOLOGY: As of May 1998, there were 2,782 owners of Purple Heart plates. Exempting this group from payment of the $10 additional plate fee (the group will continue paying the regular $20 plate fee) will reduce the Special Registration Plate Account by $27,820. The Special Registration Plate Account is used to administer the special plates program at DMV. Funds not used for administration are distributed as follows:

33% Department of Commerce - for promotion of travel and industrial development
50% Department of Transportation - for highway beautification
17% Department of Health and Human Services - for promotion of travel accessibility for disabled persons

A $27,820 reduction in the Special Registration Plate Account will reduce the amount transferred to the three agencies as follows:

Department of Commerce	$ 9,181
Department of Transportation	13,910
Dept. of Health & Human Services	4,729

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington

DATE: May 13, 1998

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1272 A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE FEE FOR PURPLE HEART REGISTRATION PLATES AND TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO REDESIGN THE PURPLE HEART PLATE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1326*
Committee Substitute Favorable 7/6/98
Proposed Committee Substitute H1326-PCSX6864

Short Title: Update IRC Reference/Conform Gift Tax. (Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES FROM FIVE YEARS TO TWENTY YEARS, AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997,~~ August 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. G.S. 105-130.8 reads as rewritten:

"**§ 105-130.8. Net economic loss.**

(a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 20 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to the following limitations:

(1) The purpose in allowing the deduction of a net economic loss of a prior year ~~or years~~ is ~~that of granting~~ to grant some measure of relief to the corporation ~~which~~ that has incurred economic misfortune or ~~which~~ is otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction ~~herein specified~~ allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that ~~such loss or losses shall result~~ the loss results in the impairment of the net economic situation of the corporation so as to result in a net economic loss as ~~hereinafter defined.~~ defined in this section.

(2) The net economic loss for any year ~~shall mean~~ means the amount by which allowable deductions for the year other than prior year losses ~~shall~~ exceed income from all sources in the year including any income not taxable under this Division.

(3) Any net economic loss of ~~a prior year or~~ prior years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that ~~such carry-over~~ the loss carried forward from the prior ~~year or~~ years ~~shall exceed~~ exceeds any income not taxable under this Division received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, ~~as defined in this Division,~~ only ~~such~~ that proportionate part of the net economic loss of a prior year shall be deductible from total income allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of ~~such~~ the loss.

(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the

next succeeding year before any portion of ~~such~~ the loss may be carried forward to a succeeding year.

(5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Division.

(6) No loss shall either directly or indirectly be carried forward more than ~~five~~ 20 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year shall maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The burden of proving eligibility for the deduction and the amount of the deduction shall rest upon the corporation, and no deduction shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection."

Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

"(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the ~~five~~ 20 preceding years pursuant to the provisions of G.S. 105-130.8. ~~Provided, a~~ A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8."

Section 8(a). Sections 6 and 7 of this act are effective for taxable years beginning on or after July 1, 1998, and apply to losses incurred for taxable years beginning on or after July 1, 1992.

Section 8(b). Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1326*
Committee Substitute Favorable 7/6/98

Short Title: Update IRC Reference/Conform Gift Tax. (Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES FROM FIVE YEARS TO TWENTY YEARS, AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997,~~ June 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account

ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. G.S. 105-130.8 reads as rewritten:

"**§ 105-130.8. Net economic loss.**

(a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 20 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to the following limitations:

(1) The purpose in allowing the deduction of a net economic loss of a prior year ~~or years~~ is ~~that of granting~~ to grant some measure of relief to the corporation ~~which~~ that has incurred economic misfortune or ~~which~~ is otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction ~~herein specified~~ allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that ~~such loss or losses shall result~~ the loss results in the impairment of the net economic situation of the corporation so as to result in a net economic loss as ~~hereinafter defined.~~ defined in this section.

(2) The net economic loss for any year ~~shall mean~~ means the amount by which allowable deductions for the year other than prior year losses ~~shall~~ exceed income from all sources in the year including any income not taxable under this Division.

(3) Any net economic loss of ~~a prior year or~~ prior years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that ~~such carry-over~~ the loss carried forward from the prior ~~year or~~ years ~~shall exceed~~ exceeds any income not taxable under this Division received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, ~~as defined in this Division,~~ only ~~such~~ that proportionate part of the net economic loss of a prior year shall be deductible from total income allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of ~~such~~ the loss.

(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of ~~such~~ the loss may be carried forward to a succeeding year.

(5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Division.

(6) No loss shall either directly or indirectly be carried forward more than ~~five~~ 20 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year shall maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The burden of proving eligibility for the deduction and the amount of the deduction shall rest upon the corporation, and no deduction shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection."

Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

"(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the ~~five~~ 20 preceding years pursuant to the provisions of G.S. 105-130.8. ~~Provided, a~~ A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8."

Section 8(a). Sections 6 and 7 of this act are effective for taxable years beginning on or after July 1, 1998, and apply to losses incurred for taxable years beginning on or after July 1, 1992.

Section 8(b). Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1326 (PCS):
Update IRC Reference/Conform Gift Tax

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 30, 1998
SPONSOR: Representative Gray
Recommended by the Revenue Laws Study Committee

House Bill 1326 makes three changes:

1. It rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1997, to August 1, 1998.
2. It conforms to federal gift tax treatment of qualified tuition programs.
3. It extends the carryforward period for corporate net economic losses from five years to twenty years, effective for taxable years beginning on or after July 1, 1998.

Update Code Reference. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State tax law previously tracked federal law. Congress made numerous, significant changes to the Code last year that will affect federal taxable income. This year, it enacted several additional changes that will affect taxable income. Because the State corporate and individual income taxes are based upon federal taxable income, these changes, if adopted, will affect State policies and revenues. The fiscal note and attachments list and summarize the significant changes made by the federal Taxpayer Relief Act of 1997 and the Internal Revenue Service Restructuring and Reform Act of 1998.

One of the federal tax changes enacted last year was an income tax exemption for the annual earnings on amounts contributed to qualified tuition programs, such as North Carolina's Parental Savings Trust Fund, for the future payment of room or board at an institution of higher education. North Carolina law has a provision exempting these earnings to the extent they are taxed under federal law. Because they are no longer taxed under federal law, Section 2 of the bill repeals the North Carolina exemption. Section 3 amends a related North Carolina provision to clarify that it exempts distributions from tax only if they are used for qualified higher education expenses.

Section 5 of House Bill 1326 provides that the recent federal tax law changes that could increase a taxpayer's North Carolina taxable income for the 1997 tax year will not become effective until January 1, 1998. Under Article 1, Section 16 of the North Carolina Constitution, the legislature cannot pass a law that will increase a tax retroactively. There are a number of provisions in the federal Taxpayer Relief Act of

1997 and the Internal Revenue Service Restructuring and Reform Act of 1998 that could increase taxable income for the 1997 tax year. Because the Code Update could not be acted upon until the 1998 Session of the General Assembly, these changes had to be given a delayed effective date.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this one. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law from year to year, the State may not want to adopt automatically all federal changes. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Section 2(1) of Article V of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

The Revenue Laws Study Committee explored the possibility of legislation that would automatically adopt federal changes to the Code each year, with legislative review and approval required in the succeeding legislative session. It was hoped that this approach would avoid the practical difficulties that occur when Code changes go into effect many months before the General Assembly has a chance to pass legislation adopting the changes. The Attorney General's Office reviewed the relevant case law in this State and other states before concluding that this approach would be unlikely to withstand a constitutional challenge.

Qualified Tuition Plan Gift Tax. Section 4 of House Bill 1326 adopts for North Carolina gift tax purposes the provisions of federal law listed below. Conforming to federal law will relieve taxpayers from unexpected gift tax liability and will simplify tax compliance and administration.

1. A distribution from a qualified tuition program is not a taxable gift, unless a new beneficiary, who is a generation below the original beneficiary, is named to the account or receives the account in a rollover.
2. A contribution to a qualified tuition program is a gift to the designated beneficiary, but not a gift of a future interest. If the contribution were considered a gift of a future interest, a gift tax return would have to be filed even if the amount were under the $10,000 annual exclusion amount.
3. A contribution to a qualified tuition program is not a direct payment of tuition. If it were, it would be exempt from gift tax.
4. If a contribution exceeds the $10,000 annual gift tax exclusion amount, the donor may elect to avoid gift tax by treating the contribution as if it had been made over a five-year period. For example, a $25,000 contribution would not be taxable because it would be considered a gift of $5,000 a year over five years and thus would be below the $10,000 annual exclusion amount.

These provisions would apply to any qualified state tuition program under section 529 of the Internal Revenue Code. North Carolina has such a program, known as the Parental Savings Trust Fund. This Fund is part of the State Education Assistance Authority. The Fund is authorized by G.S. 116-209.25, which the General Assembly enacted in 1996. A person can contribute amounts into the Parental Savings Trust Fund for a child who is less than 16 years old. The amount contributed in the account, along with its interest and investment earnings, can be used to pay the expenses of the beneficiary at any accredited public or private college or community college. Either the child or the person making the contributions must be a resident of this State. The Education Assistance Authority opened the Parental Savings Trust Fund in early June, 1998.

Section 529 of the Code excludes the amounts earned on contributions to a qualified state tuition program from federal income tax and, therefore, from North Carolina tax as well. Under federal law, the earnings are exempt if the contributions are for the payment of qualified higher education expenses: tuition, room and board, fees, books, supplies, and equipment. Also under federal law, the amount distributed to a beneficiary of the Parental Savings Trust Fund for qualified higher education expenses is taxable to the extent it exceeds the amount contributed. Thus, under federal law, the tax on the investment earnings is simply deferred until a distribution is made, at which time the earnings are taxable to the beneficiary rather than the contributor. Under North Carolina law, however, the entire distribution is not taxable if it is used for qualified higher education expenses. Under both federal and North Carolina law, earnings distributed for purposes other than qualified higher education expenses are taxable and are also subject to a penalty imposed by the state operating the program.

Corporate Loss Carryforwards. Sections 6 and 7 of the bill would extend the corporate income tax carryforward for net economic loss deductions from five years to twenty years. Twenty years is the carryforward period for the similar net operating loss deduction under the Internal Revenue Code. This part of the bill was not recommended by the Revenue Laws Study Committee but was added by amendment in House Finance. Because it may be difficult for an auditor to substantiate a loss carryforward based on deductions that are ten to twenty years old, the bill clarifies that the corporation has the burden of maintaining records that verify the amount of the loss deduction claimed. Sections 6 and 7 would become effective for taxable years beginning on or after July 1, 1998, and would apply to losses incurred for taxable years beginning on or after July 1, 1992.

A net economic loss is the amount by which a corporation's deductions for a taxable year exceed its income from all sources, including income not taxable by the State. Income not taxable includes income items that are deductible in determining State net income as well as a multi-state corporation's nonbusiness income that is allocable to another state. G.S. 105-130.8 allows a corporation to carry a net economic loss forward and deduct it in the next five succeeding taxable years, but only to the extent the carried forward loss exceeds the amount of any income not taxable for each succeeding year. If the corporation is a multi-state corporation, it may deduct from income allocable to this State only that percentage of the carried forward loss that corresponds to the percentage of the corporation's income allocated and apportioned to this State.

The State's net economic loss provision is apparently based on a similar provision that was in the 1939 Internal Revenue Code. The State originally allowed a two-year carryforward; the carryforward period was extended to five years in 1957.

Even if the carry forward period is extended to match the twenty-year period provided in the Internal Revenue Code, the State calculation will differ from the federal calculation in a number of respects. The Internal Revenue Code of 1954 changed the federal net economic loss deduction to a net operating loss calculation based primarily on revenues and expenditures affecting taxable income. Some limitations and restrictions have evolved in the ensuing years relating to continuity of corporate ownership, corporate equity, successor corporations, and other situations. Of course, under federal law, it is not necessary to address the state income tax issues regarding multi-state corporations whose income is allocable to more than one state. Finally, under federal law, a corporation may elect to carry the federal net operating loss deduction back for two earlier years as well as forward for twenty years.

Internal Revenue Service Restructuring and Reform Act of 1998

The following changes made by the federal IRS Restructuring and Reform Act of 1998, which became law July 22, 1998, will affect North Carolina's tax laws if the reference to the Code is updated to August 1, 1998.

1. Section 3462. Clarify Provisions Relating to Examination and Collection Activities: Offers-in-compromise. This section has no direct impact on the State's tax laws, but the Department of Revenue always considers a federal settlement as one factor when the Department is deciding on how and whether to negotiate a settlement with a taxpayer. The specific changes made by this section, which becomes effective July 23, 1998, are:
   - The IRS Secretary will prescribe guidelines for settlements. The guidelines will include schedules of allowances for basic living expenses and prohibit rejection of a low-income taxpayer's offer solely on the basis of amount.
   - The IRS may not levy while certain offers are pending or while certain installment agreements are pending or in effect.
   - The IRS Secretary will establish procedures for independent administrative review of rejected offers-in-compromise and will publish a statement of taxpayers' rights concerning offers-in-compromise.

2. Section 3711. Offset of Past-Due, Legally Enforceable State Income Tax Obligations Against Overpayments. This section expands the federal setoff debt collection program to include income taxes owed to States. Under this program, if the IRS owes a refund to a taxpayer, it will collect debts owed by the taxpayer by setting them off against the refund and will remit the set-off amount to the creditor. The priorities for this program are IRS debts, child support arrearages, and debts owed federal agencies. State income tax debts will become the fourth priority effective for refunds payable beginning January 1, 2000. Although this change does not affect North Carolina tax law, it will increase North Carolina tax revenues when debts are offset and remitted to the Department of Revenue. The offset program applies only to income tax debts owed by State residents – it will not address the problem of nonresidents who fail to pay income taxes owed to the State. To be eligible for offset, the income tax debt must have been finally determined by a judicial or administrative procedure and the time for appeal must have passed. Before submitting an income tax debt for setoff, the Department of Revenue must notify the taxpayer and give the taxpayer an opportunity to contest the debt.

3. Section 5002. Clarification of Exclusion of Meals for Certain Employees. Under current law, meals furnished to employees on the employer's premises and for the employer's convenience are not taxable income to the employee. This section provides that if the majority of the meals furnished to employees on the employer's premises are for the employee's convenience, then the meals furnished not for the employer's convenience will also be treated as if they were furnished for the employer's convenience (and thus will not be taxable to the employee).

4. Section 7001. Clarification of Deduction for Deferred Compensation. In general, contributions under a deferred compensation plan are deductible by the employer in the year in which the amount is includible in the employee's income (Section 404 of the Code). Vacation pay treated as deferred compensation is deductible by the employer in the year it is paid to the employee. In determining whether an item is considered deferred compensation, if the item is received by the employee within 2 ½ months after the end of the taxable year, it is not deferred. A recent case held that if an employer funded vacation and severance pay by obtaining a letter of credit within that 2 ½ month period, it could deduct the cost because the benefits were considered received by the employee in that period and thus were not deferred compensation. This section clarifies that compensation is not treated as received by an employee, or paid, until actually received by the employee. This clarification will require some employers to change their method of accounting. They will be allowed to spread the resulting adjustments over three years.

5. Section 7002. Freeze Grandfathered Status of Stapled or Paired-share REITS. A REIT is a real estate investment trust. It is an entity that receives most of its income from passive real estate-related investments and does not engage in any active trade or business. It is a pass-through entity whose income is not taxed if distributed to shareholders. In a "stapled" REIT structure, the shares of a REIT and a C Corporation may be traded but not sold separately. In 1984, the tax benefits of this structure were curtailed except for certain pre-existing stapled REITs. This section limits that exception to real property interests acquired on or before March 26, 1998. In general, for interests acquired after that date, the special treatment for pre-existing stapled REITs is eliminated.

6. Section 7003. Make Certain Trade Receivables Ineligible for Mark-to-Market Treatment. Under current law, dealers in securities are required to use a mark-to-market method of accounting for securities. A security is any evidence of indebtedness and a dealer is anyone who regularly buys or sells securities from or to customers in the ordinary course of business. This

section eliminates dealer mark-to-market treatment for evidences of indebtedness arising out of the sale of nonfinancial goods or services by a person whose principal activity is providing non-financial goods or services, if the indebtedness is held by that person or a related party at all times. This change will require some taxpayers to change their method of accounting. They will be allowed to spread the resulting adjustments over four years.

1997 Federal Tax Law Changes

General

The federal Taxpayer Relief Act of 1997 creates 285 new sections in the Internal Revenue Code and amends 824 existing sections. Errors in the act are expected to be corrected in 1998 in the federal Tax Technical Correction Act. The following list summarizes some of the significant provisions of the 1997 legislation.

Affects N.C. Individual Income Tax Only

1. Allows exclusion of $250,000 ($500,000 for joint filers) of capital gain from **sales of residence** occupied by taxpayer as principal residence for two of previous five years. Former rules on rollover and former one-time exclusion are repealed. Effective for sales after 5/6/97. This is a tax increase for those who have more than $250,000/$500,000 in gain, so to that extent it cannot be retroactive. (§ 121)
2. Expands business expense deduction for percentage of **self-employed individuals' health insurance**: effective in 2000, the percentage is increased to 50%, then phased up reaching 100% in 2007. (§ 16(a)(1)(B))
3. Establishes **Roth IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible contributions of up to $2,000 of compensation (limited for those with adjusted gross income above a certain amount). Distributions tax free if contributions made more than five years ago and one of the following applies: (i) taxpayer is over 59 ½ or is dead, (ii) distribution made because of disability, (iii) distribution is for qualifying first-time homebuyer expenses. Existing IRA may be rolled over to Roth IRA, subjecting rolled over amount to tax. If the IRA is rolled over to a Roth IRA in 1998, the tax due may be spread over four years. (§ 408(a))
4. Expands **existing IRAs** by increasing income limits and allowing IRA for spouse of disqualified active participant, effective for taxable years beginning on or after 1/1/98. (§219(g))
5. Establishes **Education IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible cash contributions of up to $500 a year per child under 18 (contributions limited for those with adjusted gross income above a certain amount). Annual earnings of IRA are tax-exempt and distributions are exempt to the extent spent on qualified higher education expenses. (§ 530)
6. Expands **Prepaid Tuition Programs** to include room and board as qualifying expenses, effective retroactively to August 21, 1996. N.C. already exempts these expenses. The act also expands definitions of eligible educational institution and family member, effective 1/1/98 (§ 529(c), (e)).
7. Reenacts exclusion for up to $5,250 of **employer-provided educational assistance**, effective for tax years beginning on or after 1/1/97 and for courses beginning before 6/1/2000. Does not apply to graduate level courses. (§127(d))
8. Allows above the line deduction for up to $1,000 a year of **interest paid on qualified higher education loans**, effective for interest due and paid on or after 1/1/98. The $1,000 annual limit is phased up by $500 a year until it reaches

$2,500 for 2001 and thereafter. Limited to five years of payments, and further limited for taxpayers with AGI above a certain amount. (§ 221)

9. Restricts **penalty for underpayment of estimated income tax**, so that it does not apply if total tax liability less pre-payments is less than $1,000. (N.C. piggybacks this because 105-163.15(f) references section 6654(e) of the Code.) Effective for tax years beginning on or after 1/1/98
10. Makes a small increase in **standard deduction** of individuals who can be claimed as a dependent by another (indexing not adopted), effective for tax years beginning on or after 1/1/98
11. Changes **net operating loss carryback and forward** periods from back 3 years and forward 15 years to back 2 years and forward 20 years, except for individual casualty losses and for farm and small business losses in a disaster area. Effective for tax years beginning on or after August 6, 1997. (Note, we cannot make this effective until tax years beginning on or after 1/1/98, because it is a tax increase.) Although the federal change affects both corporate and individual income tax, in NC corporate does not piggyback net operating loss treatment, so there is no effect on NC corporate income taxes.
12. Increases **charitable mileage rate** from 12¢ to 14¢, effective for tax years beginning on or after 1/1/98
13. Extends expired deduction for fair market value of **stock contributed to private foundation**, effective 5/31/97 (date of expiration) (§ 170(e)(5))
14. Expands rules governing when a **home office** qualifies as the principal place of business, effective for tax years beginning on or after 1/1/99. Note, however, that use of part of residence as home office may restrict availability of capital gain exclusion for residence.
15. Provides that capital gain from sale of certain **qualified small business stock** is not recognized to the extent the proceeds are rolled over into more qualified small business stock within 60 days, effective for sales on or after August 1, 1997.
16. Expands maximum amount of **self-employed 401(k)** contributions that may be made in certain circumstances, effective for taxable years beginning on or after 1/1/98. (§ 402, 408)
17. Provides that if an employee stock ownership plan **(ESOP)** is a shareholder in an S corporation, items of income or loss of the S corporation will not be treated as unrelated business taxable income, contrary to former law.
18. Changes tax treatment of **rural mail carriers' reimbursed mileage**, effective for tax years beginning on or after 1/1/98
19. Expands deferment of **gain from sale of livestock due to drought**, to include flood or other weather-related conditions. Effective for sales and exchanges on or after 1/1/97. (§ 451, 1033)
20. Expands **business meals/entertainment deduction for air transportation employees**, interstate truck and bus drivers, rail road employees, and merchant mariners. Increased from 50% to 55% effective for tax years beginning on or after 1/1/98. Thereafter, phased up 5% every two years to 80% in 2008.
21. Clarifies exclusion for value of **employer-provided parking**, effective for tax years beginning on or after 1/1/98.

22. Increases amount of foreign earned income that can be excluded by **US citizens residing in foreign countries**, effective for tax years beginning on or after 1/1/98, and phased up thereafter.
23. Retroactively excludes from income certain states' **disability payments to former police officers and fire fighters** in 1989, 1990, and 1991. Note: this provision applies only to certain states. If it applies to N.C., the statute of limitations will prevent refunds.
24. Excludes from income government survivor annuities for **slain public safety officers**, effective for tax years beginning on or after 1/1/97
25. Denies nonrecognition of gain when involuntarily converted property is replaced by property acquired from a related party, unless the taxpayer's aggregate gain is $100,000 or less, effective for involuntary conversions after 6/8/97. (§ 1033)
27. Changes from below the line to above the line the deduction for **State and local government official business expenses** relating to service as official, if official is compensated in whole or part on a fee basis. Effective retroactively beginning with 1987 tax year, but does not waive the three-year statute of limitations. (§62(a)(2)(c)).
28. Changes basis recovery method for pension plan payments, 1/1/98. (§72(d)).
29. Simplifies treatment of personal transactions in **foreign currency**, effective 1/1/98.
30. Increases pension full funding limit with 20-year amortization, effective 1/1/99.

Affects Partnerships (N.C. Individual Income Tax)

1. Treats as ordinary income gain attributable to inventory on sale or exchange of partnership interest and in certain partnership distributions, effective 8/5/97. (no impact)
2. Changes formula for allocation of basis among distributed assets of partnership, effective 8/5/97.
3. Extends from 5 to 7 years the period in which a partner may recognize "pre-contribution gain" with respect to contributed property when it is distributed to another partner, or when other property is distributed to the contributing partner, effective for contributions after 6/8/97.

Affects both N.C. Individual and Corporate Income Tax

1. Retroactively extends federal **R&D tax credit**, which had expired 6/1/97. N.C. law piggybacks this credit in G.S. 105-129.10.
2. Restricts types of property eligible for the more generous **income forecast method of depreciation,** effective for property placed in service on or after August 6, 1997. This method will now be allowed only for film, video tapes, sound recordings, copyrights, books, and patents.
3. Eliminates **short against the box** and similar transactions. A taxpayer must recognize gain upon entering into a constructive sale of any appreciated position in stock, etc. A constructive sale occurs if two offsetting positions are acquired in substantial identical property with the intent of reducing the taxpayer's risk

associated with the appreciated property. Gain recognized as if position sold at fair market value and repurchased on date of constructive sale. Effective 6/8/97, with transitional rules. (§ 1259).

4. Requires immediate accrual of interest or original issue discount on **pool of debt instruments** on which the principal can be paid without interest as of a certain date (e.g., credit card receivables) Effective for taxable years beginning on or after 8/5/97. (§1272)
5. Allows expensing of certain environmental remediation costs (**brownfields**) that would otherwise be chargeable to capital account. Effective for expenditures after 8/5/97 and before 2001. (§ 198)
8. Allows **inventory adjustment for estimated shrinkage** if business (1) usually makes a periodic physical count and (2) will later revise the adjustment for discrepancy between estimated shrinkage and actual shrinkage. Effective for tax years ending after 8/5/97. (§471)
9. If taxpayer enters into **short sale of property that becomes substantially worthless**, gain is recognized as if short sale closed when property became worthless. §1233(h). In addition, extends capital treatment of gains and losses under §1234A to interests in real property and nonactively traded personal property.
10. Includes income from **notional principal contracts and stock lending transactions** under Subpart F in gross income of U.S. shareholders, effective 8/5/97. (§ 951)
11. Further restricts like-kind exchanges involving foreign personal property, effective 6/8/97. (§ 1031).
12. Limits treaty benefits for payments to hybrid entities, effective 8/5/97. (§ 894).
13. Creates exception from U.S. property definition under Subpart F for certain securities positions, effective 1/1/98.
14. Exempts active financing income from Subpart F, effective during 1998 only.
15. Modifies look back method for long term contracts, effective 8/5/97.

Affects N.C. Corporate Income Tax Only

1. Recognizes gain when taxpayer exchanges property for certain preferred stock formerly not treated as "**boot**". Sections 351, 354, 355, 356, and 1036 of the Code. Effective transactions after 6/8/97.
2. Certain **corporate contributions of computer** software and equipment to schools qualify for charitable deduction in excess of otherwise applicable limit (basis of the donated property), effective for taxable years beginning on or after 1/1/98 and before 1/1/2001.
3. Repeals income deferral formerly allowed when **family farms** required to change from cash method to accrual method because gross receipts exceed $25 million. Effective for taxable years beginning on or after 7/1/96, with transitional rules.
4. Allows **Subchapter S subsidiaries** (allowed by Small Business Job Protection Act of 1996) to be treated in certain instances as separate corporations for the

purpose of applying Code provisions that benefit a certain type of entity (e.g., banks), that the subsidiary is but the parent is not. Effective 1/1/97

5. Clarifies that **software qualifies as export property** eligible for foreign sales corporation benefits, effective 1/1/98. Piggybacked by 105-130.5(a)(15)
6. Repeals deduction for premiums paid on life insurance policy or annuity in which taxpayer had an interest. Repeals deduction for **interest paid to incur life insurance coverage** where taxpayer is beneficiary and restricts deduction for taxpayer's interest expense allocable to certain cash surrender values. Also, provides pro rata disallowance of interest expense attributable to life insurance on individuals who are not officers, employees, or former employees. Effective 6/8/97.
7. Requires recognition of gain in year of extraordinary dividend if the nontaxed portion of the dividend exceeds the stock basis, and other changes. Depending on the type of extraordinary dividend, new rules effective for distributions after 5/3/95 or 9/13/95, with transition rules. .
8. Repeals law allowing manufacturers to use installment method to report income from sales to their dealers, effective for taxable years beginning on or after 8/6/98.
9. Expands circumstances in which gain is recognized upon acquisition or distribution of stock of the controlled corporation or distributing corporation, effective for transactions occurring after April 16, 1997. This change substantially restricts the availability of tax-free spinoffs. Also, effective for transfers after 6/8/97, gain recognition on transfers to investment companies expanded by expanding definition of investment company.
10. Denies **interest deduction on convertible debt** and similar debt, effective for instruments issued on or after 6/8/97. (§163(l))
11. Allows deferral of gain on sales of stock of certain corporations engaged in refining or processing agricultural products to farmers' cooperatives engaged in marketing agricultural products, effective 1/1/98. .
12. Modifies control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations, effective 1/1/99.
13. Repeals 30% gross income limitation for regulated investment companies, effective 8/5/97.

Affects Other NC Taxes

1. Extends **generation-skipping transfer tax** exemption to transfers to grandnieces and nephews where parent of transferee is deceased and transferor has no living lineal descendants at time of transfer, effective 1/1/98. (§ 2651, 2612) (We piggyback in G.S. 105-7.1.)

No Effect on N.C.

1. Allows $500 **child tax credit** ($400 in 1998). Phased out if AGI above $110,000 joint or $75,000 single/head of household

2. **Allows Education tax credits.** (1) Hope credit for portion of qualified undergraduate education tuition and fees for two years, phased out for taxpayers with AGI over certain amounts. Effective 1/1/98. (2) Lifetime learning credit for 20% of qualified undergraduate or graduate tuition, subject to cap, phased out for taxpayers with AGI over certain amounts. (§25A, 6050S)
3. **Lowers individual tax rate on capital gains**. Rate reduced from 28% to 20%. For taxpayers in 15% bracket, it is 10%. Holding period for LTCG expanded from one year to 18 months.
4. **Work opportunity tax credit** extended and expanded. New welfare to work tax credit for part of employers' wages paid to AFDC recipients, effective 1/1/98. (§ 51A)
5. Allows penalty-free (but not tax free) withdrawals from IRAs for qualified higher education expenses and first time home purchase.
6. Three-year **income averaging for farmers**, effective for 1998, 1999, and 2000 tax years. (§1301)
7. Increases **estate and gift tax unified credit** to $625,000 in 1998, $650,000 in 1999, $675,000 in 2000-01, $700,000 in 2002-03, $850,000 in 2004, $950,000 in 2005, and $1 million in 2006+
8. Reduces estate tax for land subject to permanent conservation easement, effective 1/1/98.
9. Allows **estate tax exclusion for qualified family owned business**, effective 1/1/98. This is very complex and can be narrow in its application.
10. Alternative minimum tax repealed for small corporations.
11. Alternative minimum tax depreciation adjustment eliminated for property placed in service on or after 1/1/99.
12. Farmers may use installment method of accounting for purposes of alternative minimum tax.
13. Taxpayer who fraudulently claims **earned income tax credit** is ineligible thereafter for 10 years. Also, change in definition of AGI for purpose of phasing out the EITC, effective 1/1/98.
14. Changes safe harbor test applicable to upper income individuals for purposes of penalty for underpayment of estimated taxes. We do not piggyback this. (§6654)
15. Tightens holding period rules for corporate dividends received deduction.
16. Those offering tax shelters must register with the IRS.
17. Orphan drug tax credit made permanent.

Technical/Minor - Probably Tiny Impact if Any

1. Clarifies that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance, as long as the employer does not provide long term health insurance.
2. Recaptures all depreciation (not just excess over straight line) on § 1250 property (buildings).
3. Clarifies that medical savings account withdrawals must be for an individual who was eligible (not covered by low deductible health plan) in the month the expenses were incurred.

4. Estate and its beneficiary treated as related parties for purpose of disallowing loss deduction for sales of assets to related parties and disallowing capital gains treatment for sales of depreciable property to related parties. Effective for taxable years beginning after 8/5/97. (§ 267, 1239)
5. Luxury auto depreciation limits relaxed for clean-burning fuel vehicles and electric vehicles, effective for property placed in service between 8/5/97 and 1/1/05. (§280F).
6. Employer may deduct contributions to SIMPLE 401(k) with no 15% limit, effective for taxable years beginning on or after 1/1/97. (§404(a)(3)(A))
7. Securities traders and commodity traders and dealers may elect mark to market accounting rules (previously applied only to securities dealers), effective for taxable years beginning after 8/5/97
8. Exclude from corporate unrelated business income tax income from certain corporate sponsorship payments .
9. Change treatment of travel expenses of certain federal employees engaged in criminal investigations, effective 8/5/97.
10. Changes rule for closing partnership taxable year with respect to a deceased partner, effective 1/1/98.
11. Allows deduction for contributions by ministers to retirement plans, effective 1/1/98.
12. Clarifies that **employer-provided employee meals** that are tax-free to the employee because they are for the convenience of the employer are fully deductible by employers and treated as de minimum fringe benefits effective for taxable years beginning on or after 1/1/97.
13. MedicarePlus Choice Medical Savings Accounts authorized as pilot program for individuals on Medicare, effective for taxable years beginning on or after 1/1/99. (§138, 220(b), 4973(d)).
14. Reduces **carryback period for general business credits** (such as R&D and low-income housing credits) from 3 years to 1 year, with carryforward period extended from 15 years to 20 years, effective for credits for which the taxpayer first becomes eligible in taxable years beginning on or after 1/1/98. Our R&D credit piggybacks the federal credit, and also some addbacks are allowed under our law if the taxpayer was disallowed a federal deduction for a credit for which we have no corresponding credit. (§ 39)
15. Repeals 30% gross income requirement for **real estate investment trusts**.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1326 Second Edition (Proposed Finance Committee Substitute)
SHORT TITLE: Update IRC Reference/Conform Gift Tax
SPONSOR(S): Rep. Gray, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($ Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
GENERAL FUND					
IRC Update	($6.97)	($4.01)	($10.70)	($18.53)	($33.64)
Net Economic Loss Carryforward		($16.00)	($16.00)	($16.00)	($16.00)
Total	($6.97)	($20.01)	($26.70)	($34.53)	($49.64)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Section 4 (Qualified Tuition Programs) becomes effective for taxable years beginning on or after January 1, 1998. Sections 6 and 7 (net loss carryforward) are effective for taxable years beginning on or after July 1, 1998, and apply to losses incurred for taxable years beginning on or after July 1, 1992. The remainder of the act is effective when it becomes law.

BILL SUMMARY: The act (1) updates the reference to the Internal Revenue Code used in defining and determining certain state tax provisions (from January 1, 1997 to June 1, 1998), (2) conforms to federal gift tax treatment of contributions to qualified tuition programs, and (3) extends the corporate income tax carryforward for net economic losses from five years to twenty years.

BACKGROUND: Each year the General Assembly changes the reference date in the definition of the Internal Revenue Code used in the state individual and corporate income tax statutes. Congress made hundreds of changes in the Code with the passage of the Taxpayer Relief Act of 1997. These changes were reviewed by the Revenue Laws Study Committee and were recommended to the 1998 General Assembly with a few exceptions. Those tax law changes that affect the 1997 tax year cannot be adopted by North Carolina until 1998, because the state constitution prohibits enacting a retroactive tax increase.

Taxpayer Relief Act of 1997 (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Individual Income Tax Only						
Clarify exclusion of the value of employer-provided parking	1/1/98	0.06	0.08	0.09	0.09	0.09
Increase exclusion of income earned by US citizens residing in foreign countries		-0.22	-0.36	-0.48	-0.59	-0.70
Exclude from income the disability payments to former police officers and fire fighters retroactive to 1989, 1990, and 1991		-	-	-	-	-
Exclude from income government survivor annuities to slain public safety officers	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Deny nonrecognition of gain of involuntarily converted property	6/8/97	0.03	0.04	0.06	0.08	0.09
Provide an above the line deduction for state and local officials' expenses	1/1/87	-0.03	-0.03	-0.03	-0.04	-0.04
Change basis recovery method for pension plan payments modified	12/31/97	0.02	0.04	0.07	0.08	0.11
Simplify treatment of personal transactions in foreign currency	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Increase full funding limit with 20 year amortization for pensions	12/31/98	-0.03	-0.09	-0.10	-0.13	-0.14
Affects Partnerships (Individual Income Tax)						
Classify sale or exchange of inventory in partnership as ordinary income	8/5/97	No impact - NC already taxes as ordinary income				
Change formula for allocation of basis among distributed assets of partnership	8/5/97	0.38	0.40	0.41	0.43	0.44
Extend period from 5 to 7 years for recognition of precontribution gains	6/8/97	-	-	-	0.01	0.07
Affects both Individual and Corporate Income Tax						
Extend R&D tax credit retroactive to 6/1/97	6/1/97	Costs included in the Bill Lee act				
Restrict income forecast method of depreciation	8/6/97	0.30	0.45	0.56	0.27	0.20
Eliminate short against the box transaction for stock	6/8/97	0.87	0.49	0.53	0.57	0.61
Require immediate accrual of interest on pool of debt instruments	8/5/97	1.99	2.59	2.31	2.05	0.72
Allow expensing of certain environmental remediation costs for brownfields	8/5/97	-0.95	-1.19	-0.46	0.00	0.01
Allow inventory adjustment for estimated shrinkage	8/5/97	-0.15	-0.17	-0.18	-0.20	-0.21
Change gain recognition rules under sections 1233 and 1234A of the Internal Revenue Code	8/5/97	0.20	0.18	0.18	0.18	0.18

Taxpayer Relief Act of 1997 (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Both Individual and Corporate License Tax						
Include income from notional principal contracts and stock lending transactions in gross income of U.S. shareholders	8/5/97	0.14	0.15	0.15	0.15	0.15
Restrict like-kind exchanges involving foreign personal property	6/8/97	0.06	0.08	0.09	0.11	0.12
Limit treaty benefits for payments to hybrid entities	8/5/97	0.01	0.01	0.01	0.01	0.01
Exempt certain securities positions from U.S. property definition under subpart F	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Exempt active financing income from subpart F	1998	-0.49	-0.02	0.00	0.00	0.00
Modify look-back method for long term contracts	8/5/97	-0.01	-0.02	-0.03	-0.03	-0.03
Affects Corporate Income Tax Only						
Recognize gain from exchange of property for preferred stock treated as boot	6/8/97	0.20	0.21	0.22	0.23	0.05
Expand charitable deduction for corporate contributions of computer software and equipment	1/1/98	-0.26	-0.42	-0.27	-0.03	-0.01
Repeal income deferral when farms change from cash method to accrual method	7/1/96	0.18	0.19	0.20	0.20	0.21
Allow Subchapter S subsidiaries to be treated as separate corporations	1/1/97	No estimate available				
Clarify that software qualifies as export property	1/1/98	-0.23	-0.79	-0.94	-0.98	-1.04
Restrict corporate deductions relating to life insurance	8/6/98	0.29	0.50	0.76	1.05	1.34
Require recognition of gain from extraordinary dividend and other changes	9/13/95	-0.50	-0.29	-0.05	0.24	0.42
Repeal law allowing manufacturers to use installment method to report sales to their dealers	8/6/98	0.24	0.53	0.57	0.57	0.35
Require gain recognition on certain distributions of controlled corporation stock and change tax treatment of redemptions involving related corporations	6/8/97	1.37	1.20	1.04	0.88	0.73
Deny interest deduction on convertible debt	6/8/97	0.09	0.16	0.23	0.30	0.34
Defer gain allowed on sales of stock of certain corporations engaged in refining or processing agricultural products to farmer cooperatives engaged in marketing agricultural products	12/31/97	-0.37	-0.03	-0.03	-0.02	-0.02
Modify control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations	12/31/98	0.00	0.00	0.02	0.03	0.03
Repeal 30% gross income limitation for regulated investment companies	8/5/97	-0.12	-0.15	-0.18	-0.21	-0.24

Taxpayer Relief Act of 1997 (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affect Other NC Taxes						
Extend generation-skipping transfer tax exemption to grandnieces and grand nephews	1/1/98	-0.03	-0.03	-0.03	-0.03	-0.03
IRS Restructuring and Reform Act of 1998						
Individual & Corporate						
Clarify provisions relating to examination and collection activities; Offers-in- compromise	Generally 7/23/98	--	0.07	0.03	0.03	0.03
Authorize the Federal government to offset a Federal Income Tax refund to satisfy a past-due, legally owing state income tax debt	1/1/00		Gain, but no estimate available			
Clarifies the exclusion of meals provided for the convenience of employees on employer's premises	upon enactment	-0.11	-0.18	-0.18	-0.19	-0.20
Overrule Schmidt Baking with respect to vacation pay and severance and other types of compensation, with three year spread	1/1/98	4.55	5.40	2.47	1.67	0.85
Freeze grandfathered status of Stapled or Paired-Share REITS	1/1/98	0.01	0.02	0.03	0..05	0.08
Make certain trade receivables ineligible for Mark-to-Market Treatment	1/1/98	1.72	2.71	1.80	0.63	0.38
TOTAL - IRC UPDATE		**-6.97**	**-4.01**	**-10.7**	**-18.53**	**-33.64**

Taxpayer Relief Act of 1997 - Other Provisions	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Gift Tax						
Treat contributions in excess of $10,000 to state pre-paid tuition plans as being made ratably over a five year period	1/1/98	Negligible revenue effect				
Technical/Minor Impact						
Clarify that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance		No estimate available				
Recapture all depreciation on section 1250 property		No estimate available				
Clarify that medical savings account withdrawals are for individual who was eligible in the month the expenses were incurred		No estimate available				
Treat estate and its beneficiaries as related parties for purpose of disallowing loss deduction for sales of assets	8/5/97	Negligible revenue effect				
Relax luxury auto depreciation limits for clean burning fuel vehicles and electric vehicles	8/5/97	-0.01	0.00	0.00	0.00	0.00
Allow employer deduction for contributions to SIMPLE 401(k) with no 15% cap	1/1/97					
Allow securities traders and commodity traders and dealers to elect mark to market accounting rules	8/5/97	No estimate available				
Exclude from unrelated business tax income certain corporate sponsorship payments	12/31/97	Negligible revenue effect				
Change treatment of travel expenses of certain federal employees engaged in criminal investigations	8/6/97	No revenue impact				
Close partnership taxable year with respect to deceased partner	12/31/97	No revenue impact				
Deduct contributions made by ministers to retirement plans	12/31/97	Negligible revenue effect				
Clarify tax-free employer-provided employee meals	1/1/97	No revenue impact				
Authorize MedicarePlus Choice Medical Savings Accounts pilot program	1/1/99	No estimate available				

Taxpayer Relief Act of 1997 (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Reduce carryback period for general business credits, but increase carry forward	1/1/98		Negligible revenue effect			
Repeal 30% gross income requirement for real estate investment trusts	8/5/97		Negligible revenue effect			

NOTES:

1) North Carolina estimates are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is N.C. actual tax collections divided by national tax collections. (Individual = .723% Corporate = .542%)

2) The North Carolina constitution prohibits enacting a retroactive tax increase, so this bill cannot adopt federal revenue increasing items for the 1997 tax year. This chart assumes that half of the revenue gained from tax increases in 1997 will be received by the Department in Tax Year 1998.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington
DATE: August 3, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 873
Finance Committee Substitute Adopted 7/14/98
Third Edition Engrossed 7/16/98

Short Title: Local Government Debt Changes. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN TAX-EXEMPT AND TAXABLE DEBT ISSUED BY OR ON BEHALF OF A LOCAL GOVERNMENT IS SUBJECT TO APPROVAL BY THE LOCAL GOVERNMENT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 8 of Chapter 159 of the General Statutes reads as rewritten:

"ARTICLE 8.

"Financing ~~Agreements.~~ Agreements and Other Financing Arrangements."

Section 2. Article 8 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"**§ 159-153. Approval of other financing arrangements.**

(a) Commission Approval Required. -- Except as provided in subsection (b) of this section, approval by the Commission in accordance with this section is required before a unit of local government, or any public body, agency, or similar entity created by any action of a unit of local government, may do any of the following:

(1) Incur indebtedness.

(2) Enter into any similar type of financing arrangement.

(3) Approve or otherwise participate in the incurrence of indebtedness or the entering into of a similar type of financing arrangement by another party on its behalf.

(b) Exceptions. -- Approval by the Commission in accordance with this section is not required in any of the following cases:

(1) Another law of this State already specifically requires Commission approval of the indebtedness or financing arrangement and the required approval is obtained in accordance with that law.

(2) The indebtedness or financing arrangement is a contract entered into by a unit of local government pursuant to G.S. 160A-20 and is not subject to review by the Commission pursuant to G.S. 160A-20(e).

(3) The indebtedness or financing arrangement is excepted from the review requirements of this Article because it does not meet the conditions of G.S. 159-148(a)(1) or (3) or because it is excluded pursuant to G.S. 159-148(b).

(c) Effect of Special Act. -- No special, local, or private act shall be construed to create an exception from the review of the Commission required by this section unless the act explicitly excludes the review and approval of the Commission.

(d) Factors Considered. -- The Commission may consider all of the following factors in determining whether to approve the incurrence of, entering into, approval of, or participation in any indebtedness or financing arrangement subject to approval pursuant to this section:

(1) Whether the undertaking is necessary or expedient.

(2) The nature and amount of the outstanding debt of the entity proposing to incur the indebtedness or enter the financing arrangement.

(3) Whether the entity proposing to operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement. In making this determination, the Commission may consider the operating entity's experience and financial position, the nature of the undertaking being financed, and any additional security such as insurance, guaranties, or property to be pledged to secure the indebtedness or financing arrangement.

(4) Whether the proposed date and manner of sale of obligations will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or by any agency of either of them.

(5) The local government unit's debt management procedures and policies.

(6) The local government unit's compliance with the Local Government Budget and Fiscal Control Act.

(7) Whether the local government unit is in default in any of its debt service obligations.

(e) Documentation. -- To facilitate the review of the proposed indebtedness or financing arrangement by the Commission, the Secretary may require the unit or other entity to obtain and submit any financial data and information about the proposed indebtedness or financing arrangement and security for it, including any proposed prospectus or offering circular, the proposed financing arrangement and security document, and annual and other financial reports and statements of the obligated entity. Applications and other documents required by the Commission must be in the form prescribed by the Commission.

(f) Conditions for Approval. -- If the Commission determines that all of the following conditions are met, the Commission shall approve the incurrence of the indebtedness, entering of the financing arrangement, or approval or other participation in the indebtedness or financing arrangement, by the unit of local government or the other entity referred to in subsection (a) of this section:

(1) The amount of the indebtedness to be incurred or financed is not excessive for the purpose contemplated.

(2) The entity that will operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement.

(3) The proposed date and manner of sale of obligations will not have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them."

Section 3. This act is effective when it becomes law and applies to debt and financing arrangements incurred, entered into, approved, or participated in on or after that date.

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, AUGUST 4, 1998

8:30 a.m. Room 544-LOB

The House Committee on Finance met on Tuesday, August 4, 1998 at 8:30 a.m. in Room 544-LOB. A silent roll was taken (roll list denotes members present).

SB- 873 LOCAL GOVERNMENT DEBT CHANGES

Sen. Kerr explained the bill. Rep. Brown spoke in favor of the bill and moved for a favorable report. Rep. Gray sent forth an amendment to change the effective date and moved for adoption. Rep. Ramsey asked if there were any exceptions. Ms. Martha Harris, Bill Drafting Division answered. Rep. Luebke questioned the change and Rep. Gray responded.

The vote was taken on the amendment and it passed.

Rep. Capps asked for current fees. Mr. David Crotts, Fiscal Research Division, and Mr. Bob High, State Treasurers Department responded. Rep. Howard questioned non-profits changing their operations and Ms. Harris responded to her inquiry. Rep. Brawley asked if school boards are considered local government and Ms. Harris answered.

The vote was taken and given a favorable report.

HB-1272 NO FEE FOR PURPLE HEART PLATES

Rep. Rayfield explained the bill. Rep. Beall shared pictures of the new plates. Rep. Beall moved for a favorable report. Rep. Starnes asked how many are eligible to the new plates and Rep. Beall responded. Rep. Starnes was concerned that if these are offered at no cost the fiscal impact would increase. Rep. Cunningham asked if NC is the only state to charge for the purple heart plate. Rep. Cunningham offered to prepare an amendment to eliminate the fee. Mr. Richard Bostic, Fiscal Research Division advised that the veterans had agreed to pay for their plates and not receive it free. Rep. Cunningham withdrew is offer of an amendment. Rep. Nichols requested clarification of the fees and Rep. Rayfield responded. Rep. Goodwin spoke in favor of the bill. Rep.

Cunningham asked if the Department of Transportation was okay with this legislation. Ms. Ruth Sappee, DOT Legislative Liaison addressed members.

The vote was taken and passed.

HB-1326 UPDATE IRC REF/CONFORM GIFT TAX

Rep. Gray explained the bill. Rep. Dickson moved for adoption of the proposed committee substitute for discussion. So moved. Ms. Martha Harris explained the federal changes that had been made. Rep. Dickson questioned Ms. Harris about the changes and she responded. Rep. Decker inquired about the chart provided by staff and Ms. Harris explained. He then asked for the differences and she responded again. Rep. Dickson spoke in favor of the bill and moved for a favorable report, unfavorable to the original bill. Rep. Hackney requested a fiscal impact explanation. Mr. Richard Bostic answered and Rep. Gray made additional comments. Rep. Jarrell requested clarification of "grand nieces and nephews". Ms. Harris explained. Rep. Capps asked about the parking provision. Ms. Harris explained. Rep. Hackney commented that parking was a big issue in his district due to the universities. Rep. Hackney suggested an amendment to exclude parking. Rep. Gray had no objection. Rep. Hackney spoke again regarding parking. Ms. Harris advised she would need time to prepare this amendment since it would apply to other state employees . Reps. Dickson, Neely and Luebke spoke on the parking issue. Rep. Luebke requested this be displaced until an amendment could be prepared. Discussion continued, and Rep. Hackney spoke again. Rep. Brawley would like to include everyone, not only state employees. Rep. Decker asked about taxes being withheld on parking. Mr. Greg Radford, Personal Tax Division, Department of Revenue, addressed members. Rep. Cole asked about exemptions and taxation's. Mr. Radford and Ms. Harris responded. Rep. Dickson questioned Mr. Radford and he responded. Rep. Gray requested to adjourn until Wednesday.

The meeting adjourned at 9:50 a.m.

Connie Wilson
Rep. C. Wilson, Chair

Cindy Brooks
Cindy Brooks, Clerk

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 873

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S873-ALC-10 Page 1 of __

Date_____,1998

Comm. Sub. [YES]
Amends Title []
Third Edition

Representative _____

moves to amend the bill on page 3, line 28,
by rewriting the line to read:
"Section 3. This act becomes effective January 1, 1999,
and applies to debt".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 873
Finance Committee Substitute Adopted 7/14/98
Third Edition Engrossed 7/16/98
Proposed House Committee Substitute S873-PCS6866

Short Title: Local Government Debt Changes. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN TAX-EXEMPT AND TAXABLE DEBT ISSUED BY OR ON BEHALF OF A LOCAL GOVERNMENT IS SUBJECT TO APPROVAL BY THE LOCAL GOVERNMENT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 8 of Chapter 159 of the General Statutes reads as rewritten:

"ARTICLE 8.

"Financing ~~Agreements.~~ Agreements and Other Financing Arrangements."

Section 2. Article 8 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"**§ 159-153. Approval of other financing arrangements.**

(a) Commission Approval Required. -- Except as provided in subsection (b) of this section, approval by the Commission in accordance with this section is required before a unit of local government, or any public body, agency, or similar entity created by any action of a unit of local government, may do any of the following:

(1) Incur indebtedness.

(2) Enter into any similar type of financing arrangement.

(3) Approve or otherwise participate in the incurrence of indebtedness or the entering into of a similar type of financing arrangement by another party on its behalf.

(b) Exceptions. -- Approval by the Commission in accordance with this section is not required in any of the following cases:

(1) Another law of this State already specifically requires Commission approval of the indebtedness or financing arrangement and the required approval is obtained in accordance with that law.

(2) The indebtedness or financing arrangement is a contract entered into by a unit of local government pursuant to G.S. 160A-20 and is not subject to review by the Commission pursuant to G.S. 160A-20(e).

(3) The indebtedness or financing arrangement is excepted from the review requirements of this Article because it does not meet the conditions of G.S. 159-148(a)(1) or (3) or because it is excluded pursuant to G.S. 159-148(b).

(c) Effect of Special Act. -- No special, local, or private act shall be construed to create an exception from the review of the Commission required by this section unless the act explicitly excludes the review and approval of the Commission.

(d) Factors Considered. -- The Commission may consider all of the following factors in determining whether to approve the incurrence of, entering into, approval of, or participation in any indebtedness or financing arrangement subject to approval pursuant to this section:

(1) Whether the undertaking is necessary or expedient.

(2) The nature and amount of the outstanding debt of the entity proposing to incur the indebtedness or enter the financing arrangement.

(3) Whether the entity proposing to operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement. In making this determination, the Commission may consider the operating entity's experience and financial position, the nature of the undertaking being financed, and any additional security such as insurance, guaranties, or property to be pledged to secure the indebtedness or financing arrangement.

(4) Whether the proposed date and manner of sale of obligations will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or by any agency of either of them.

(5) The local government unit's debt management procedures and policies.

(6) The local government unit's compliance with the Local Government Budget and Fiscal Control Act.

(7) Whether the local government unit is in default in any of its debt service obligations.

(e) Documentation. -- To facilitate the review of the proposed indebtedness or financing arrangement by the Commission, the Secretary may require the unit or other entity to obtain and submit any financial data and information about the proposed indebtedness or financing arrangement and security for it, including any proposed prospectus or offering circular, the proposed financing arrangement and security document, and annual and other financial reports and statements of the obligated entity. Applications and other documents required by the Commission must be in the form prescribed by the Commission.

(f) Conditions for Approval. -- If the Commission determines that all of the following conditions are met, the Commission shall approve the incurrence of the indebtedness, entering of the financing arrangement, or approval or other participation in the indebtedness or financing arrangement, by the unit of local government or the other entity referred to in subsection (a) of this section:

(1) The amount of the indebtedness to be incurred or financed is not excessive for the purpose contemplated.

(2) The entity that will operate the facilities financed by the indebtedness or financing arrangement and the entity obligating itself under the indebtedness or financing arrangement have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the indebtedness or financing arrangement.

(3) The proposed date and manner of sale of obligations will not have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them."

Section 3. This act becomes effective January 1, 1999, and applies to debt and financing arrangements incurred, entered into, approved, or participated in on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 873 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT CERTAIN TAX-EXEMPT AND TAXABLE DEBT ISSUED BY OR ON BEHALF OF A LOCAL GOVERNMENT IS SUBJECT TO APPROVAL BY THE LOCAL GOVERNMENT COMMISSION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

Horse Power — Aug 4, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mike Aguete	NCBSA
C. Parker	Bone & Associates
T Hamilton	Hamilton Consulting
Sam Johnson	Atty
Doug Miskew	IBM
Bob High	Dept of State Treas.
[illegible]	Parker, Poe, [illegible] & Bernstein
Doug Rogers	NCDOT
Becki Strut	Parker Poe Adams & Bernstein
VL McBride	NCDA
Ron Aycock	County Com. Assoc
Diane Johnson	DMV

VISITOR REGISTRATION SHEET

Horse Pasture

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Greg Radford	NC DOR
Patti Stowell	NC DOR
Keith Hartman	NC DOR
Jay Hare	NC DOR
Paul White	NCMBA
Ken Howell	NCBA
Jack Cozart	Parker Poe
Ann Christian	BB&T
Jim Blackburn	NCAFI
David Simmons	ZOA, PA
Andy Romanet	N.C.L.M.
Hall Hyde	Bode Call & Stroupe

VISITOR REGISTRATION SHEET

Horse Pasture

me of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Julian Philpott	NC Farm Bureau
Ruth Sappie	NCDOT
Catherine Davis	Electricities of NC
Ken Rumsfeld	Poyner Spruill
Jim Upchurch	CP&L
AB	BFT
Stacey Vaughts	Intern
Suzanne Williams	NCCCS
Ed Regan	NCDCC
Bonnie Allen	SOS
Sheila Pope	SOS
[illegible]	NCHOA

VISITOR REGISTRATION SHEET

Horse Racing

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Lester Maddox	Georgia -
Wallace Wood	Robert Wagner
Leon McKillion	Moore - Van Allen

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, JULY 29, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Wednesday, July 29, 1998, at 8:30 a.m. in room 544-LOB. A silent roll was taken (roll list denotes members present).

Chairman Brawley called the meeting to order and introduced the Pages. He also offered Rep. Gamble best wishes and thanked him for serving on the Finance committee since he will be leaving the General Assembly on Friday, July 31, 1998.

HB-1273 REFUND INTANGIBLES TAX FOR ALL

Rep. Allred spoke on the bill and reminded members it was carried over from the Tuesday meeting. Rep. Dickson to hear from the Attorney General's office. Mr. Andy Vanore, Attorney General's office addressed members. Rep. Capps asked about court rulings and he answered. Rep. Hackney asked for details of the Smith ruling and Mr. Vanore responded. Reps. Cunningham, and Gamble also asked clarifying questions which Mr. Vanore responded to.

Rep. Allred sent forth an amendment and asked Rep. Morgan, Rules Chairman if this would make it a requirement to go to Appropriations. Rep. Morgan asked staff to explain the amendment and where the money will come from for Section 3 of the bill. Ms. Martha Harris, Bill Drafting Division explained. Rep. Morgan then advised it would be sent to the Appropriations Committee. Rep. Allred moved for adoption of the amendment. Rep. Starnes asked if the amendment was adopted, will it still be eligible for this session. Rep. Morgan answered and Rep. Allred withdrew his amendment.

Rep. Miller sent forth an amendment. He spoke on the amendment and asked Ms. Harris to explain it. Rep. Miller then made additional comments. Rep. Allred spoke against the amendment and asked Mr. Crotts, Fiscal Research Division, for the difference in the fiscal impact. Mr. Crotts responded. Rep. Luebke asked Mr. Crotts about amount paid for the years of 1993 & 1994 to the protesters. Mr. Crotts responded. Rep. Luebke then spoke in favor of the amendment. The vote was taken on the amendment and failed with division being called. The vote was 16-16.

Rep. Allred moved for a favorable report, unfavorable to the original bill. A roll call was had been requested at the July 28th meeting by Rep. Starnes. The roll call vote was taken and the bill was given a favorable report, unfavorable to the original bill, 34-2. (copy of roll call vote attached).

Rep. Gamble asked the chairman if he could ask Mr. Crotts a couple more questions. He asked how much would the total tax relief for this year be and if this was recurring or non-recurring. Mr. Crotts advised he would provide this information to him.

The meeting adjourned at 9:15 a.m.

C. Robert Brawley
Rep. Brawley, Chairman

Cindy Brooks, Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1273
Proposed Committee Substitute H1273-PCS3165-LC

Short Title: Refund Intangibles Tax to All. (Public)

Sponsors:

Referred to:

May 14, 1998

A BILL TO BE ENTITLED

AN ACT TO REFUND THE UNCONSTITUTIONAL INTANGIBLES TAX PAID ON STOCK FOR THE 1990 THROUGH 1994 TAX YEARS WITH INTEREST, REGARDLESS OF THE THIRTY-DAY PROTEST RULE.

The General Assembly of North Carolina enacts:

Section 1. Effective retroactively for the 1990, 1991, 1992, 1993, and 1994 tax years, G.S. 105-203 is repealed.

Section 2. Notwithstanding the provisions of G.S. 105-267, the Secretary of Revenue shall refund the tax repealed by this act, with interest, in three annual installments as provided in this section. Refunds for the 1993 and 1994 tax years shall be paid on July 1, 1999. Refunds for the 1992 and 1991 tax years shall be paid on July 1, 2000. Refunds for the 1990 tax year shall be paid on July 1, 2001. The Secretary of Revenue shall draw the refunds from collections under Part 2 of Article 4 of Chapter 105 of the General Statutes.

Section 3. The Secretary of Revenue may draw the sum of five million dollars ($5,000,000) from collections under Part 2 of Article 4 of Chapter 105 of the General Statutes for the 1998-99 fiscal year to pay for the costs of administering this act. These funds shall not revert at the end of the fiscal year but shall remain available until used for this purpose.

Section 4. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute repealed by this act before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal.

Section 5. Section 1 of this act is effective retroactively for the 1990, 1991, 1992, 1993, and 1994 tax years. The remainder of this act is effective when this act becomes law.

EXPLANATION OF HOUSE BILLS 1273(PCS):
Refund Intangibles Tax to All

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 28, 1998
SPONSOR: Representative Allred

This bill would refund intangibles tax paid on stock by taxpayers who have no legal right to a refund because they failed to protest (demand a refund) within 30 days after paying the tax as required by G.S. 105-267[1]. The refunds would cover taxes paid for the 1990 through 1994 taxable years, plus interest, and would be remitted over three years according to the following schedule:

Tax Year	Refund Paid
1993, 1994	July 1, 1999
1992, 1991	July 1, 2000
1990	July 1, 2001

The Secretary of Revenue would draw the cost of the refunds and interest from individual income tax collections. In addition, the Secretary of Revenue is authorized to draw $5 million from 1998-99 income tax collections in order to pay for the costs of administering the refunds. These funds would remain available until used for this purpose.

The Attorney General has issued an opinion that refunding the intangibles tax to nonprotesters would be unconstitutional. Because the State has no legal obligation to these taxpayers, any payments would be an exclusive emolument prohibited by Article I, Section 32 of the North Carolina Constitution. The exclusive emoluments provision of the State Constitution prohibits the legislature from extending special privileges to a select group of individuals except in consideration of public services.

On February 10, 1997, the North Carolina Supreme Court held that the taxable percentage deduction in the North Carolina intangibles tax on stock violated the commerce clause by discriminating against out-of-state companies. The deduction reduced a taxpayer's liability for the tax in proportion to the amount of business the corporation did in North Carolina. The court did not order refunds. Instead, it allowed the possibility of curing the past

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[1] The 30-day period was extended to one year in 1996, effective for taxes paid on or after November 1, 1996.

discrimination by the assessment of intangibles tax on those who did not pay in reliance on the unconstitutional taxable percentage deduction. In response, the General Assembly enacted and the Governor signed legislation directing the Secretary of Revenue to take no action to collect or assess back intangibles tax for tax years 1990 through 1994. This legislation foreclosed the possibility of assessments on those who relied on the taxable percentage deduction. Therefore, to cure the past discrimination, refunds, plus interest, had to be paid to those intangibles taxpayers who paid tax on shares of stock and who protested the payment of the tax within 30 days of payment.

Many taxpayers who paid the tax without protesting believe it is unfair that they did not receive refunds. They have sued the State for refunds. A class action, Smith v. State, seeking nonprotester refunds for the 1991-94 tax years was dismissed at the trial level but is now in the North Carolina Supreme Court on appeal. Arguments will be heard on October 1, 1998, and the court can be expected to issue a decision within a year or two afterward. A second lawsuit, Shaver v. State, has been filed seeking refunds for nonprotesters for the 1990-94 tax years. The Shaver lawsuit has not advanced past the trial stage.

In its recent decision in the Bailey case, which also involved the 30-day protest rule, the North Carolina Supreme Court ruled that both protesters and nonprotesters were entitled to relief because, contrary to its terms, G.S. 105-267 does not require a protest as a condition for receiving a refund. It is not clear whether the court will follow the same logic in the Smith case.

If the General Assembly provides refunds to intangibles tax nonprotesters, its action will affect the Smith and Shaver cases. If the General Assembly's legislative relief were identical to what is being demanded in either lawsuit, then that lawsuit would be moot. The lower court might, however, still award attorneys fees. This bill does not provide relief identical to what the lawsuits are seeking. It is less than what is being demanded because it is spread out over several years. Thus, if this bill is enacted, there will be no incentive for the plaintiffs to settle or to abandon the lawsuit. The legislation would merely provide the worst case scenario for the plaintiffs: if they lose the case, they will get only the legislative relief. If they win the case, they will get the greater judicial relief, and the attorneys will get attorneys fees.

A detailed history of the intangibles tax is attached to this summary.

History of the Intangibles Tax

1868 to 1979: The North Carolina Constitution of 1868 mandated uniform and universal property taxation on real property, tangible personal property, and intangible personal property. Property taxes were assessed and collected by local governments. In 1937, the General Assembly classified intangibles and removed them from the local property tax; instead, they were taxed by the State and part of the tax proceeds were distributed to local governments. This change was made because local governments had difficulty achieving a satisfactory level of taxpayer compliance through local collection mechanisms. The tax applied to money on deposit, money on hand, accounts receivable, bonds, notes, and shares of stock. The taxable percentage deduction for North Carolina companies was part of the tax scheme.

The tax on intangible property balanced the property tax on tangible personal property and the property tax on real property. Some taxpayers, such as farmers and timber growers, have most of their wealth in real property. Other taxpayers, such as manufacturers and retailers, have large investments in equipment and inventory; and others have most of their wealth in stocks and bonds. Under the 1937 scheme, each group paid a share of the cost of local government through property tax on one of the three types of property.

1979 Tax Relief: The General Assembly provided tax relief by exempting deposit accounts of less than $1,000.

1980 Tax Relief: The General Assembly provided additional tax relief by providing that an intangibles tax return need not be filed if the tax due was $15 or less.

1985 Partial Repeal: The General Assembly repealed the tax on money on deposit, money on hand, and certain accounts receivable. This left an intangibles tax of 25 cents per $100 market value of bonds, remaining accounts receivable, and stock and shares in mutual funds. The stock tax statute exempted a proportion of corporate stock equal to the percentage of the corporation's business that was conducted in North Carolina. Thus, stock of a corporation that did 55% of its business in North Carolina was 55% exempt from the intangibles tax. This exemption was known as the "taxable percentage" deduction.

Fulton: Fulton Corporation challenged the intangibles tax on stock on the grounds that the tax violated the Commerce Clause of the United

States Constitution because it provided for a reduction of the tax in proportion to the issuing company's income taxed in North Carolina. The superior court upheld the tax as constitutional.

Court of Appeals: In 1993, the Court of Appeals reversed the superior court ruling. It found that the taxable percentage deduction was unconstitutional. It repealed the deduction and ordered the intangibles tax to be paid without any reduction for income taxes paid to the State. It did not order a refund of taxes previously paid.

Supreme Court: In 1994, the North Carolina Supreme Court reversed the Court of Appeals. It held that the taxable percentage deduction did not offend the Commerce Clause.

1995 Repeal of the Tax: In 1995, the General Assembly repealed the intangibles tax on stocks, bonds, mutual funds, and accounts receivable.

1996 USSC Decision: In 1996, the United States Supreme Court reversed the North Carolina Supreme Court. It agreed with the decision rendered by the Court of Appeals: the taxable percentage deduction violated the Commerce Clause. It sent the case back to the North Carolina Supreme Court to "fashion a remedy".

Supreme Court: On February 10, 1997, the North Carolina Supreme Court ruled that the part of the intangibles tax statute that the United States Supreme Court held unconstitutional, the taxable percentage deduction, should be severed from the statute and that the balance of the statute should be enforced. This left the intangibles tax to be enforced without any reduction for stock of corporations doing business in North Carolina. The Court also ruled that the tax applied retroactively. The Court's opinion made it possible for holders of North Carolina stock to be assessed by the Department of Revenue for tax due on the value of stock that was excluded from tax because of the unconstitutional deduction. Taxes could have been assessed for three back tax years for those who filed a return and for an indefinite period for those who did not file a return.

Retroactive Tax Rescinded: In April 1997, the General Assembly enacted legislation directing the Secretary of Revenue to take no action to assess or collect intangibles tax from any taxpayer for liability arising solely from the taxpayer's use of the taxable percentage deduction. This legislation made the State liable for refunds to protesters for 1990-94 but, according to the Attorney General, not for refunds to nonprotesters.

Smith case: This is a class action lawsuit comprised of both protesters and nonprotesters. The plaintiffs seek refunds of the stock tax for 1991 through 1994. The court ordered refunds with interest to the protesters. The nonprotesters' claims were dismissed and the nonprotesters have appealed; that case is before the North Carolina Supreme Court.

Nonprotesters: The Attorney General informed the General Assembly in April 1997 that legislation providing refunds to nonprotesters would be unconstitutional. Because the State has no legal obligation to taxpayers who did not make a timely protest, any payments would be an exclusive emolument prohibited by Article I, Section 32 of the North Carolina Constitution. The exclusive emoluments provision of the State Constitution prohibits the legislature from extending special privileges to a select group of individuals except in consideration of public services.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: HB 1273 (Prop. House Finance Comm. Sub.)
SHORT TITLE: Refund Intangibles Tax to All

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($Million)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	Total
REVENUES*					
Refunds		**-$70.76**	**-$164.35**	**-$62.50**	**-$297.61**
Interest		**- 28.69**	**- 106.19**	**- 53.98**	**- 188.86**
Total		**-$99.45**	**-$270.54**	**-$116.48**	**$486.47**
Earmarking	**-$5.0****				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The refunds would be administered by the Department of Revenue.

*This estimate assumes the State will not be found liable for some or all of the refunds as a result of the impact of the Bailey case language on the intangibles tax litigation (Smith case).

**Maximum reduction.

BILL SUMMARY: Retroactively repeals the intangibles tax on shares of stock for the 1990-94 tax years and requires the Secretary of Revenue to pays refunds with interest on intangibles taxes paid on shares of stock by nonprotestors for the 1990-94 tax years according to the following schedule:

7/1/99	1993 and 1994 tax years
7/1/00	1991 and 1992 tax years
7/1/01	1990 tax year.

(Over)

The refunds will be netted out of personal income tax collections. In addition, the Department of Revenue will be allowed to earmark up to $5 million of personal income tax collections for the 1998-99 fiscal year to pay the costs of administering the refunds. The earmarking would not revert at the end of the fiscal year but would remain available for granting refunds in future years.

ASSUMPTIONS AND METHODOLOGY: Data on estimated refunds and interest calculated through September 30, 1997 was provided by the Department of Revenue. The additional interest from that date until the payout date specified in the bill was calculated by FRD assuming 9% simple interest per year. In addition, the analysis assumes that all taxpayers eligible for the refund will actually receive the refund.

There were an estimated 926,053 intangibles tax returns filed on shares of stock during the 1990-94 period. Thus, the average refund and interest check will be $525 Some taxpayers will receive a refund for more than one year.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: July 29, 1998

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1273 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Allred
Sen.)

moves to amend the bill on page 1, lines 15-19

( ) WHICH CHANGES THE TITLE

by deleting Section 3 of the bill and renumbering the remaining sections accordingly

Withdrawn

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1273

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1273-ALC-7/29 Page 1 of __

Date_____, 199__

Comm. Sub. [YES]
Amends Title [YES]
PCS3165

Rep. Miller

moves to amend the bill on page 1, line 3,
by deleting "1990 THROUGH" and substituting "1993 AND";

and on page 1, line 6,
by deleting "1990, 1991, 1992, 1993," and substituting "1993";

and on page 1, lines 9 - 12,
by rewriting the liens to read:
"of Revenue shall refund the tax repealed by this act, with interest, on July 1, 1999. The";

and on page 2, lines 1 - 2,
by deleting "1990, 1991, 1992, 1993," and substituting "1993"

SIGNED Miller
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

7-29-98

ROLL CALL VOTE

(intangibles)

34 YES 2 NO = _____(TOTAL)

HB# 1273
SB# ____

HOUSE STANDING COMMITTEE ON _____

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
✓		ALLRED			HIGHTOWER
		ARNOLD	✓		JARRELL
✓		BADDOUR	✓		LUEBKE
✓		BEALL	✓		MCCOMAS
		BERRY	✓		MCCOMBS
		BOYD-MCINTYRE	✓		MCMAHAN
✓		BROWN			MERCER
✓		BUCHANAN		✓	MILLER
✓		CAPPS			MINER
		CARPENTER	✓		MORGAN
✓		COLE	✓		MORRIS
		CRAWFORD		✓	NEELY
✓		CUNNINGHAM			NESBITT
		DECKER			NICHOLS
✓		DEDMON	✓		RAMSEY
✓		EDDINS	✓		RAYFIELD
		FITCH	✓		RUSSELL
✓		GAMBLE	✓		STARNES
✓		GOODWIN			TALLENT
✓		HACKNEY	✓		WOMBLE
✓		HENSLEY	✓		WRIGHT
✓		HILL			
✓		HOWARD			
✓		~~HUNTER~~ Bryant			

___	___	**CHAIRMEN**		
✓	___	GRAY	___	___
✓	___	BRAWLEY	___	___
✓	___	DICKSON	___	___
✓	___	WILSON, C.	___	___
___	___		___	___
___	___		Ex officio Members	
___	___		___	___ Speaker Pro TemWOOD
___	___		___	___ Majority LeaderDAUGHTRY
___	___		___	___ Majority Whip

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
H.B. 1273 A BILL TO BE ENTITLED AN ACT TO REFUND THE UNCONSTITUTIONAL INTANGIBLES TAX PAID ON STOCK FOR THE 1990 THROUGH 1994 TAX YEARS WITH INTEREST, REGARDLESS OF THE THIRTY-DAY PROTEST RULE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill (# 1), ☐ ~~which changes the title,~~ unfavorable as to original bill (~~Committee Substitute Bill # _____~~), ~~(and recommendation that the committee substitute bill # 1) be re-referred to the Committee on ____~~

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

Name of Committee: House Finance

Date: July 29, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mike Lastr	NCT Box 20463 Raleigh N.C. 27619
Eugene Boyce	Class Counsel, Smith/Shaver lawsuits
Janice Burke	Dept. of State Treasurer
Robert M. Hyde	Dept of State Treas.
W R Eberhardt	Private - Cary
Jane P. Gray	DOJ
Andy Vanore	DOJ
Thomas F. Moffitt	DOJ
Sabra J. Faires	Dept. of Revenue
Bill Daniel	DOR
Helen Lipman	Meck. Co. Social Services
Danny Massey	DOR

VISITOR REGISTRATION SHEET

Horse Pasture

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
David Simmons	ZPA, PA
Scott Lagon	Moore Van Allen
Stacey Laughter	Intern
Catherine Davis	ElectriCities
John McMillan	Manning Fulton & Skinner PA
MANILA G. SHAVER	Intangibles Taxpayer Assn
Kelli Kukura	DuPont
Mike Carpenter	NCBIA
Leanne Winner	NCBIA
Ed Regan	N.L.A.C.C.
Ron Aycock	NCACC

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, JULY 28, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Tuesday, July 28, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken (roll list denotes members present).

Rep. Dickson called the meeting to order and asked the Pages to introduce themselves.

HB-1617 POULTRY COMPOSTING TAX CREDIT

Rep. Gamble moved for adoption of the proposed committee substitute for discussion. So moved. Rep. Mitchell explained the bill. Rep. Hackney spoke in favor and moved for a favorable report, unfavorable to the original bill. The vote was taken and passed.

SB-138 DISSOLVE SANITARY DISTRICT

Rep. Womble moved for adoption of the proposed committee substitute for discussion. So moved. Rep. Rayfield explained that this was discussed last week and sent to a sub-sub committee for to work out some details. Rep. Brown spoke in favor and moved for a favorable report, unfavorable to the original bill. The vote was taken and passed.

HB-1273 REFUND INTANGIBLES TAX TO ALL

Rep. Womble moved for adoption of the proposed committee substitute for discussion. So moved. Rep. Allred explained the bill, urged adoption and moved for a favorable report. He then sent forth an amendment. Ms. Martha Harris, Bill Drafting Division, explained the amendment. Rep. McMahan asked if the Attorney General's office had an opinion on this legislation. Ms. Harris advised of a conversation she had with their office. Chairman Dickson asked her to also explain past tax refunds. Rep. Allred made additional comments. Rep. Jarrell asked if this amendment passed would it make it identical to HB-1293. Rep. Wilson explained the differences and urged support of this bill. Rep. Nichols questioned the fiscal impact and Mr. David Crotts, Fiscal Research Division responded. Rep. Decker had a series of questions regarding equal payments and Mr. Crotts answered. Ms. Harris made additional comments.

Rep. Capps asked about the amount of interest for non protesters only. Mr. Crotts responded. Rep. Brown questioned the three refunds and Ms. Harris responded. Rep. Womble asked if protesters were paid with interest. Ms. Harris answered. Rep. Womble asked Rep. Allred if he was doing this for non-protesters to receive interest. Rep. Allred answered.

The vote was taken on the amendment and passed.

Rep. Womble asked Ms. Harris about attorneys fees and she answered. Rep. Capps supports the bill. Mr. Crotts spoke again on the fiscal impact since the amendment had been adopted. Rep. Luebke asked if this was eligible for this session. Ms. Harris and Rep. Allred responded. Chairman Dickson advised he would verify this with the Rep. Morgan, Rules Chairman, and we would stand at recess for a few minutes.

Chairman Dickson called back to order and Rep. Allred sent forth another amendment which, if passed, made it eligible for this session. Ms. Harris read the amendment and explained. Rep. Luebke asked about the fiscal impact on the budget. Mr. Crotts responded. Rep. Nichols questioned ear marking for revenues and Mr. Crotts answered. Rep. Brown asked about the excess at the end of the year and Ms. Harris answered.

The vote was taken and the amendment was adopted.

Rep. Neely suggested this be sent to a sub-sub committee. He had a series of questions of staff regarding the ruling on the Bailey case, and what is the down side of this bill as amended. Ms. Harris responded. Rep. Neely then asked to hear from the Department of Revenue regarding additional expenses for the Department. Ms. Sabra Fairies, Assistant Secretary, DOR, advised it would require additional programming and postage. Rep. Neely then urged caution on this legislation. He felt it needed to be looked at in more detail. Rep. Cunningham asked what would happen if North Carolina makes a ruling and the federal government makes a different ruling. Ms. Harris explained. Rep. Allred spoke on the bill again. Rep. Cunningham agrees that this is the right thing to do, but feels this is premature in case it were to be overturned by the Supreme Court. Rep. Starnes spoke in favor of the bill and requested the ayes and noes be recorded. Rep. Capps urged support. Rep. Eddins urged support. Rep. Hackney asked staff about another case, the Smith brief and Ms. Harris explained it. Rep. Dedmon spoke in favor of the bill. Rep. Miller agreed with Rep. Neely that this need to be given additional consideration and sent to a Judiciary committee. He moved to displace this bill until the Attorney General or someone from his office could be present at our meeting to share their opinion. Rep. Allred spoke on the motion and urged to defeat this motion and move forward on this today. Rep. Baddour spoke in favor of the motion and feels it would only be fair to wait to hear from the AG. He also asked Ms. Harris is there

would be personal liability on the General Assembly if this passed now. Ms. Harris answered. Rep. Eddins spoke against the motion. Rep. Nicholas agreed with Rep. Eddies and asked not to delay the vote. Rep. Cunningham spoke again and urged caution, and supports the motion.

The vote on the Miller motion was taken and division was called.

Time expired and the meeting adjourned at 9:50.

W Dickson
Rep. Dickson, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

TUESDAY, JULY 28, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Dickson

BILLS FOR DISCUSSION:

HB - 1273	Refund Intangibles Tax To All	Rep. Allred
HB- 1293	Refund Intangibles Tax with Interest	Rep. C. Wilson
HB- 1617	Poultry Composting Tax Credit	Rep. Mitchell
SB- 138	PVT H20 Sys. Loan/Dissolve San. Dist.	Sen. Odom/Rep. Rayfield

ADJOURNMENT

AGENDA

COMMITTEE ON FINANCE

TUESDAY, JULY 28, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Dickson

BILLS FOR DISCUSSION:

HB - 1273	Refund Intangibles Tax To All	Rep. Allred
HB- 1293	Refund Intangibles Tax with Interest	Rep. C. Wilson
HB- 1617	Poultry Composting Tax Credit	Rep. Mitchell
SB- 138	PVT H20 Sys. Loan/Dissolve San. Dist.	Sen. Odom/Rep. Rayfield

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1273
Proposed Committee Substitute H1273-PCS8364-LC

Short Title: Refund Intangibles Tax to All. (Public)

Sponsors:

Referred to:

May 14, 1998

A BILL TO BE ENTITLED

AN ACT TO REFUND THE UNCONSTITUTIONAL INTANGIBLES TAX PAID ON STOCK FOR THE 1990 THROUGH 1994 TAX YEARS, REGARDLESS OF THE THIRTY-DAY PROTEST RULE.

The General Assembly of North Carolina enacts:

Section 1. Effective retroactively for the 1990, 1991, 1992, 1993, and 1994 tax years, G.S. 105-203 is repealed.

Section 2. Notwithstanding the provisions of G.S. 105-267, the Secretary of Revenue shall refund the amount of the tax repealed by this act in three annual installments as provided in this section. Refunds for the 1993 and 1994 tax years shall be paid on July 1, 1999. Refunds for the 1992 and 1991 tax years shall be paid on July 1, 2000. Refunds for the 1990 tax year shall be paid on July 1, 2001. The Secretary of Revenue shall draw the refunds from collections under Part 2 of Article 4 of Chapter 105 of the General Statutes.

Section 3. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute repealed by this act before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal.

Section 4. Section 1 of this act is effective retroactively for the 1990, 1991, 1992, 1993, and 1994 tax years. The remainder of this act is effective when this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1273

Short Title: Refund Intangibles Tax to All. (Public)

Sponsors: Representatives Allred; Allen, Arnold, Baker, Beall, Berry, Buchanan, Cole, Davis, Dedmon, Eddins, Esposito, Fox, Gardner, Goodwin, Grady, Gulley, Hall, Hardy, Hurley, Jeffus, Justus, McCrary, Morgan, Nichols, Nye, Preston, Redwine, Saunders, Shubert, Smith, Starnes, Watson, and Wood.

Referred to: Finance.

May 14, 1998

A BILL TO BE ENTITLED

AN ACT TO REFUND THE UNCONSTITUTIONAL INTANGIBLES TAX PAID ON STOCK FOR THE 1990 THROUGH 1994 TAX YEARS WITH INTEREST, REGARDLESS OF THE THIRTY-DAY PROTEST RULE.

The General Assembly of North Carolina enacts:

Section 1. Effective retroactively for the 1990, 1991, 1992, 1993, and 1994 tax years, G.S. 105-203 is repealed.

Section 2. Notwithstanding the provisions of G.S. 105-267, the Secretary of Revenue shall refund the tax repealed by this act with interest. The refunds shall be paid as soon as practicable but no later than June 30, 1999. The Secretary of Revenue shall draw the refunds from collections under Part 2 of Article 4 of Chapter 105 of the General Statutes.

Section 3. Section 1 of this act is effective retroactively for the 1990, 1991, 1992, 1993, and 1994 tax years. The remainder of this act is effective when this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1293

Short Title: Refund Intangibles Tax With Interest. (Public)

Sponsors: Representatives C. Wilson; Baker, Buchanan, Cansler, Capps, Culp, Davis, Decker, Esposito, Hall, Hardy, Hurley, Justus, McComas, Moore, Morgan, Morris, Preston, Rayfield, Russell, Shubert, and Weatherly.

Referred to: Finance.

May 18, 1998

A BILL TO BE ENTITLED

AN ACT TO REFUND THE UNCONSTITUTIONAL INTANGIBLES TAX PAID ON STOCK WITH INTEREST FOR THE 1991 THROUGH 1994 TAX YEARS.

The General Assembly of North Carolina enacts:

Section 1. Effective retroactively for the 1991, 1992, 1993, and 1994 tax years, G.S. 105-203 is repealed.

Section 2. Notwithstanding the provisions of G.S. 105-267, the Secretary of Revenue shall refund the tax repealed by this act with interest. The refunds shall be paid as soon as practicable. The Secretary of Revenue shall draw the refunds from collections under Part 2 of Article 4 of Chapter 105 of the General Statutes.

Section 3. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 4. Section 1 of this act is effective retroactively for the 1991, 1992, 1993, and 1994 tax years. The remainder of this act is effective when this act becomes law.

EXPLANATION OF HOUSE BILLS 1273 & 1293:
Refund Intangibles Tax

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 24, 1998
SPONSOR: H1273: Representative Allred
H1293: Representative C. Wilson

Both of these bills would refund intangibles tax paid on stock by taxpayers who have no legal right to a refund because they failed to protest (demand a refund) within 30 days after paying the tax as required by G.S. 105-267[1]. The following chart illustrates the provisions of each bill:

Bill Number	**HB 1273 (PCS)**	**HB 1293**
Sponsor	Rep. Allred	Rep. C. Wilson
Tax Years	1990-94	1991-94
Interest?	Principal Only	Interest + Principal
Timetable	3 annual installments beginning 7/1/99	As soon as practicable
Source of Funds	Income Tax Collections	Income Tax Collections

The Attorney General has issued an opinion that refunding the intangibles tax to nonprotesters would be unconstitutional. Because the State has no legal obligation to these taxpayers, any payments would be an exclusive emolument prohibited by Article I, Section 32 of the North Carolina Constitution. The exclusive emoluments provision of the State Constitution prohibits the legislature from extending special privileges to a select group of individuals except in consideration of public services.

On February 10, 1997, the North Carolina Supreme Court held that the taxable percentage deduction in the North Carolina intangibles tax on stock violated the commerce clause by discriminating against out-of-state companies. The deduction reduced a taxpayer's liability for the tax in proportion to the amount of business the corporation did in North Carolina. The court did not order refunds. Instead, it allowed the possibility of curing the past discrimination by the assessment of intangibles tax on those who did not pay in reliance on the unconstitutional taxable percentage deduction. In response, the

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[1] The 30-day period was extended to one year in 1996, effective for taxes paid on or after November 1, 1996.

General Assembly enacted and the Governor signed legislation directing the Secretary of Revenue to take no action to collect or assess back intangibles tax for tax years 1990 through 1994. This legislation foreclosed the possibility of assessments on those who relied on the taxable percentage deduction. Therefore, to cure the past discrimination, refunds, plus interest, had to be paid to those intangibles taxpayers who paid tax on shares of stock and who protested the payment of the tax within 30 days of payment.

Many taxpayers who paid the tax without protesting believe it is unfair that they did not receive refunds. They have sued the State for refunds. A class action, Smith v. State, seeking nonprotester refunds for the 1991-94 tax years was dismissed at the trial level but is now in the North Carolina Supreme Court on appeal. Arguments will be heard on October 1, 1998, and the court can be expected to issue a decision within a year or two afterward. A second lawsuit, Shaver v. State, has been filed seeking refunds for nonprotesters for the 1990-94 tax years. The Shaver lawsuit has not advanced past the trial stage.

In its recent decision in the Bailey case, which also involved the 30-day protest rule, the North Carolina Supreme Court ruled that both protesters and nonprotesters were entitled to relief because, contrary to its terms, G.S. 105-267 does not require a protest as a condition for receiving a refund. It is not clear whether the court will follow the same logic in the Smith case.

If the General Assembly provides refunds to intangibles tax nonprotesters, its action will affect the Smith and Shaver cases. If the General Assembly's legislative relief is identical to what is being demanded in either lawsuit, then that lawsuit will be moot. The lower court might, however, still award attorneys fees. If the relief is less than what is being demanded, because it does not provide interest, because it does not cover all tax years, or because it is spread out over several years, then there will be no incentive for the plaintiffs to settle or to abandon the lawsuit. The legislation will merely provide the worst case scenario for the plaintiffs: if they lose the case, they will get only the legislative relief. If they win the case, they will get the greater judicial relief, and the attorneys will get attorneys fees.

A detailed history of the intangibles tax is attached to this summary.

History of the Intangibles Tax

1868 to 1979: The North Carolina Constitution of 1868 mandated uniform and universal property taxation on real property, tangible personal property, and intangible personal property. Property taxes were assessed and collected by local governments. In 1937, the General Assembly classified intangibles and removed them from the local property tax; instead, they were taxed by the State and part of the tax proceeds were distributed to local governments. This change was made because local governments had difficulty achieving a satisfactory level of taxpayer compliance through local collection mechanisms. The tax applied to money on deposit, money on hand, accounts receivable, bonds, notes, and shares of stock. The taxable percentage deduction for North Carolina companies was part of the tax scheme.

The tax on intangible property balanced the property tax on tangible personal property and the property tax on real property. Some taxpayers, such as farmers and timber growers, have most of their wealth in real property. Other taxpayers, such as manufacturers and retailers, have large investments in equipment and inventory; and others have most of their wealth in stocks and bonds. Under the 1937 scheme, each group paid a share of the cost of local government through property tax on one of the three types of property.

1979 Tax Relief: The General Assembly provided tax relief by exempting deposit accounts of less than $1,000.

1980 Tax Relief: The General Assembly provided additional tax relief by providing that an intangibles tax return need not be filed if the tax due was $15 or less.

1985 Partial Repeal: The General Assembly repealed the tax on money on deposit, money on hand, and certain accounts receivable. This left an intangibles tax of 25 cents per $100 market value of bonds, remaining accounts receivable, and stock and shares in mutual funds. The stock tax statute exempted a proportion of corporate stock equal to the percentage of the corporation's business that was conducted in North Carolina. Thus, stock of a corporation that did 55% of its business in North Carolina was 55% exempt from the intangibles tax. This exemption was known as the "taxable percentage" deduction.

Fulton: Fulton Corporation challenged the intangibles tax on stock on the grounds that the tax violated the Commerce Clause of the United

States Constitution because it provided for a reduction of the tax in proportion to the issuing company's income taxed in North Carolina. The superior court upheld the tax as constitutional.

Court of Appeals: In 1993, the Court of Appeals reversed the superior court ruling. It found that the taxable percentage deduction was unconstitutional. It repealed the deduction and ordered the intangibles tax to be paid without any reduction for income taxes paid to the State. It did not order a refund of taxes previously paid.

Supreme Court: In 1994, the North Carolina Supreme Court reversed the Court of Appeals. It held that the taxable percentage deduction did not offend the Commerce Clause.

1995 Repeal of the Tax: In 1995, the General Assembly repealed the intangibles tax on stocks, bonds, mutual funds, and accounts receivable.

1996 USSC Decision: In 1996, the United States Supreme Court reversed the North Carolina Supreme Court. It agreed with the decision rendered by the Court of Appeals: the taxable percentage deduction violated the Commerce Clause. It sent the case back to the North Carolina Supreme Court to "fashion a remedy".

Supreme Court: On February 10, 1997, the North Carolina Supreme Court ruled that the part of the intangibles tax statute that the United States Supreme Court held unconstitutional, the taxable percentage deduction, should be severed from the statute and that the balance of the statute should be enforced. This left the intangibles tax to be enforced without any reduction for stock of corporations doing business in North Carolina. The Court also ruled that the tax applied retroactively. The Court's opinion made it possible for holders of North Carolina stock to be assessed by the Department of Revenue for tax due on the value of stock that was excluded from tax because of the unconstitutional deduction. Taxes could have been assessed for three back tax years for those who filed a return and for an indefinite period for those who did not file a return.

Retroactive Tax Rescinded: In April 1997, the General Assembly enacted legislation directing the Secretary of Revenue to take no action to assess or collect intangibles tax from any taxpayer for liability arising solely from the taxpayer's use of the taxable percentage deduction. This legislation made the State liable for refunds to protesters for 1990-94 but, according to the Attorney General, not for refunds to nonprotesters.

Smith case: This is a class action lawsuit comprised of both protesters and nonprotesters. The plaintiffs seek refunds of the stock tax for 1991 through 1994. The court ordered refunds with interest to the protesters. The nonprotesters' claims were dismissed and the nonprotesters have appealed; that case is before the North Carolina Supreme Court.

Nonprotesters: The Attorney General informed the General Assembly in April 1997 that legislation providing refunds to nonprotesters would be unconstitutional. Because the State has no legal obligation to taxpayers who did not make a timely protest, any payments would be an exclusive emolument prohibited by Article I, Section 32 of the North Carolina Constitution. The exclusive emoluments provision of the State Constitution prohibits the legislature from extending special privileges to a select group of individuals except in consideration of public services.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: HB 1293
SHORT TITLE: Refund Intangibles Tax With Interest
SPONSOR(S): Rep. C. Wilson

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($Million)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES*	-$312.5				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The refunds would be administered by the Department of Revenue.

EFFECTIVE DATE: When the bill becomes law.

*This estimate assumes the State will not be found liable for some or all of the refunds as a result of the Bailey case (retirees) on the intangibles tax litigation (Smith case).

BILL SUMMARY: Repeals intangibles tax on shares of stock retroactively to the 1991-94 tax year and directs the Secretary of Revenue to pay refunds, with interest, for taxes paid for those years. The refunds shall be paid as soon as practicable. The refunds will be netted out of personal income tax collections. Because taxpayers who filed a timely protest to the tax have received refunds and interest, the effect of the legislation is to pay refunds and interest to nonprotestors.

ASSUMPTIONS AND METHODOLOGY: Data on estimated refunds was provided by the Department of Revenue. This analysis assumes that 100% of eligible refunds and interest are claimed and that all amounts are paid during the 1998-99 fiscal year. Finally, interest is calculated through September 30, 1998 and the interest rate for the July 1-Sept. 30 period is the same rate (9%) as that charged as of June 30.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: July 27, 1998

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: HB 1273 (Prop. House Finance Comm. Sub.)
SPONSOR(S):

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($Million)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES*		**-$67.2****	**-$163.6**	**-$62.5**	

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The refunds would be administered by the Department of Revenue.

*This estimate assumes the State will not be found liable for some or all of the refunds as a result of the Bailey case (retirees) on the intangibles tax litigation (Smith case).

**The amount for this two-year period (see "Amendment Summary") is relatively small due to the large number of taxpayers who have already received refunds because they protested the tax.

AMENDMENT SUMMARY: Pays refunds, without interest, on intangibles taxes paid on shares of stock by nonprotestors for the 1990-94 tax years as follows:

7/1/99	1993 and 1994 tax years
7/1/00	1991 and 1992 tax years
7/1/01	1990 tax year.

The refunds will be netted out of personal income tax collections.

ASSUMPTIONS AND METHODOLOGY: Data on estimated refunds was provided by the Department of Revenue.

TECHNICAL CONSIDERATIONS: The analysis assumes that the State is not already liable for refunds due to language in the Bailey case. At this time it appears that the intangibles tax refund issue is still under litigation.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: July 27, 1998

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1273 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Allred
Sen.)

moves to amend the bill on page 1, lines 9-10

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"of Revenue shall refund the tax repealed by this act with interest in three annual installments as provided in this section. Refunds for the 1993 and 1994 tax years shall be paid on July 1, 1999. Refunds for the 1992 and 1991 tax years shall be paid on July 1, 2000. Refunds for the 1990 tax year shall be paid on July 1, 2001. The Secretary of ".

SIGNED Allred

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1273 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Allred
Sen.)

moves to amend the bill on page 1, line s 12-13

( ) WHICH CHANGES THE TITLE

by ~~adding~~ adding a new section to read:

"Section 3. The Secretary of Revenue may draw the sum of five million dollars ($5,000,000) from collections under Part 2 of Article 4 of Chapter 105 of the General Statutes for the 1998-99 fiscal year to pay for the costs of administering this act. These funds shall not revert at the end of the fiscal year but shall remain available until used for this purpose."

And by renumbering the remaining section accordingly.

SIGNED Allred

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1617
Committee Substitute Favorable 6/30/98
Proposed Committee Substitute H1617-PCS3163-RB1

Short Title: Poultry Composting Tax Credit. (Public)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE INCOME TAX CREDIT FOR POULTRY COMPOSTING FACILITIES TO CORPORATE ENTITIES AND TO REMOVE THE SUNSET FOR THE INDIVIDUAL INCOME TAX CREDIT.

The General Assembly of North Carolina enacts:

Section 1. Division I of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.43. Credit for construction of poultry composting facility.**

A taxpayer who constructs in this State a poultry composting facility, as defined in G.S. 106-549.51 for the composting of whole, unprocessed poultry carcasses from commercial operations in which poultry is raised or produced, is allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the installation, materials, and equipment costs of construction paid during the taxable year. This credit may not exceed one thousand dollars ($1,000) for any single installation. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. The credit allowed by this section does not apply to costs paid with funds provided the taxpayer by a State or federal agency."

Section 2. G.S. 105-151.25(a) reads as rewritten:

"(a) Credit. -- A taxpayer ~~or Subchapter S corporation~~ who constructs in this State a poultry composting facility as defined in G. S. 106-549.51 for the composting

of whole, unprocessed poultry carcasses from commercial operations in which poultry is raised or produced is allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the installation, materials, and equipment costs of construction paid during the taxable year. This credit may not exceed one thousand dollars ($1,000) for any single installation. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. The credit allowed by this section does not apply to costs paid with funds provided the taxpayer by a State or federal agency."

Section 3. Section 4 of Chapter 543 of the 1995 Session Laws reads as rewritten:

"Sec. 4. Section 1 of this act becomes effective for taxable years beginning on or after January 1, ~~1995, and expires for taxable years beginning on or after January 1, 1998.~~ 1995. The remainder of this act is effective upon ratification."

Section 4. Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1617
Committee Substitute Favorable 6/30/98

Short Title: Poultry Composting Tax Credit. (Public)

Sponsors:

Referred to:

May 28, 1998

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE INCOME TAX CREDIT FOR POULTRY COMPOSTING FACILITIES TO CORPORATE ENTITIES AND TO REMOVE THE SUNSET FOR THE TAX CREDIT.

The General Assembly of North Carolina enacts:

Section 1. Division I of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.43. Credit for construction of poultry composting facility.**

A taxpayer who constructs in this State a poultry composting facility as defined in G.S. 106-549.51 for the composting of whole, unprocessed poultry carcasses from commercial operations in which poultry is raised or produced is allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the installation, materials, and equipment costs of construction paid during the taxable year. This credit may not exceed one thousand dollars ($1,000) for any single installation. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. The credit allowed by this section does not apply to costs paid with funds provided the taxpayer by a State or federal agency."

Section 2. G.S. 105-151.25(a) reads as rewritten:

"(a) Credit. -- A taxpayer ~~or Subchapter S corporation~~ who constructs in this State a poultry composting facility as defined in G. S. 106-549.51 for the composting of whole, unprocessed poultry carcasses from commercial operations in which poultry

is raised or produced is allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the installation, materials, and equipment costs of construction paid during the taxable year. This credit may not exceed one thousand dollars ($1,000) for any single installation. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. The credit allowed by this section does not apply to costs paid with funds provided the taxpayer by a State or federal agency."

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

EXPLANATION OF HOUSE BILL 1617:
Poultry Composting Tax Credit (PCS)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 27, 1998
SPONSOR: Representative Mitchell

House Bill 1617 removes the sunset from the individual income tax credit for constructing a facility in this State for the composting of poultry carcasses resulting from commercial poultry operations. The current credit, which expires this year, is available only to individuals and shareholders in Subchapter S corporations. The bill expands the credit to C corporations. The **proposed committee substitute** adds Section 3 to the bill to remove the sunset language from the 1995 Session Laws.

The amount of the credit allowed is 25% of the installation, equipment, and materials costs of building the facility, not to exceed $1,000. The credit does not apply to costs paid with funds provided to the taxpayer by a State or federal agency. The amount of the credit allowed cannot exceed the amount of tax imposed for the taxable year and any unused credit may not be carried forward to succeeding taxable years.

A poultry composting facility is a structure or an enclosure in which whole, unprocessed poultry carcasses are decomposed by a natural process into an organic, biologically safe by-product that can be used for plant food. Every person that is engaged in raising poultry for commercial purposes and has a flock of at least 200 fowl is required to dispose of the poultry carcasses in a pit, an incinerator, or a poultry composting facility that has been approved by the Department of Agriculture. In the poultry business, the grower of a bird is often not the owner of the bird. The burden of disposing of poultry mortalities is usually on the grower of the bird.

The purpose of the credit is to encourage people who raise turkeys, chickens, or other poultry to compost the dead poultry rather than burn it or put it in a pit. By composing the poultry carcasses, the by-product can be converted into a useful product.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1617 (Proposed Committee Substitute)

SHORT TITLE: Poultry Composting Tax Credit

SPONSOR(S): Representatives Mitchell, Allred, Davis, and Hackney

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	($30,000)	($30,000)	($30,000)	($30,000)	($30,000)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY: This bill extends income tax credit for poultry composting facilities to corporate entities and removes the sunset for the individual income tax credit.

BACKGROUND: This tax credit is available for individuals and S corporations who construct facilities in North Carolina for composting whole, unprocessed poultry carcasses from commercial poultry operations. The credit is equal to 25% of the installation, materials, and equipment costs of construction paid during the taxable year, but not to exceed $1,000 for any single installation. The credit is not refundable and there is no carry-forward of the credit. The credit does not apply to costs paid with funds provided by a state or federal agency. The credit expires in the 1998 tax year.

ASSUMPTIONS AND METHODOLOGY: Before constructing a poultry composting facility, the grower must receive a permit from the Veterinary Division in the Department of Agriculture and Consumer Services. Based on permit information, the number of facilities constructed since 1990 is as follows:

1990 (began in August)	12
1991	63
1992	132
1993	133
1994	85
1995	136
1996	61
1997	33
1998 (by July 27)	20

The numbers above show a decline in composting facilities since 1995. Dr. Thomas A. Carter, Extension Poultry Specialist at North Carolina State University, attributes this decline to poultry growers' increased use of incineration. Due to incineration and other technological changes, Dr. Carter believes the number of composting facilities will average 30 per year over the next five years.

The cost to continue this credit is approximately $30,000 per year. As noted above, there will be 30 composting facilities constructed each year. Since the cost of a compost facility is between $5,000 and $10,000 per installation, each facility will qualify for the maximum $1,000 credit. This fiscal note assumes each grower has enough tax liability to fully use each tax credit. Since there is no data on the tax status of the permit holders, this note contains the total cost for both individual and corporate taxpayers.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: July 27, 1998

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1617 A BILL TO BE ENTITLED AN ACT TO EXTEND THE INCOME TAX CREDIT FOR POULTRY COMPOSTING FACILITIES TO CORPORATE ENTITIES AND TO REMOVE THE SUNSET FOR THE TAX CREDIT.

☐ 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 (~~# 2), which~~ changes the title, unfavorable as to Senate committee substitute bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 138
House Committee Substitute Favorable 7/15/98
Corrected Copy 7/17/98
Proposed House Committee Substitute S138-CSLA-001

Short Title: Dissolve Sanitary Dist. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ALTERNATIVE PROCEDURE FOR DISSOLUTION OF A SANITARY DISTRICT THAT HAS NO INDEBTEDNESS AND THE TERRITORY OF WHICH HAS BEEN ENTIRELY ANNEXED.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-73.1. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.

(a) When the boundaries of a sanitary district that (i) is located entirely within one county, (ii) has no outstanding indebtedness, (iii) at the time of its creation was not located entirely within or coterminous with the corporate limits of a city or town, (iv) has not provided any water or sewer service for at least five years, (v) did not levy any ad valorem tax in the current year, (vi) has been for at least five years entirely located within or coterminous with the corporate limits of a city or town, and (vii) at the time of the annexation of the area of the district by that city or town, the city or town assumed all assets and liabilities of the district, the board of that

district by unanimous vote may petition the board of commissioners of the county in which the district is located to dissolve the district. Upon receipt of the petition, the board of commissioners shall notify the Department and the governing body of the city or town within which the district lies of the receipt of the petition. If the Commission, the county board of commissioners, and the governing body of the city or town shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. All taxes levied by the sanitary district that were levied prior to, but that are collected after, the dissolution shall vest in the city or town. All property held, owned, controlled, or used by the sanitary district upon the dissolution or that may later be vested in the sanitary district, and all judgments, liens, rights, and causes of actions in favor of the sanitary district shall vest in the city or town. At the dissolution, taxes owed to the sanitary district shall be collected by the city or town.

(b) The procedure for the dissolution of a sanitary district set out in this section is an alternative to the procedure set out in G.S. 130A-73 and any sanitary district to which both that section and this section apply may be dissolved under either section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 138
House Committee Substitute Favorable 7/15/98
Corrected Copy 7/17/98
Proposed House Committee Substitute S138-CSLA-001

Short Title: Dissolve Sanitary Dist. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ALTERNATIVE PROCEDURE FOR DISSOLUTION OF A SANITARY DISTRICT THAT HAS NO INDEBTEDNESS AND THE TERRITORY OF WHICH HAS BEEN ENTIRELY ANNEXED.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-73.1. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.

(a) When the boundaries of a sanitary district that (i) is located entirely within one county, (ii) has no outstanding indebtedness, (iii) at the time of its creation was not located entirely within or coterminous with the corporate limits of a city or town, (iv) has not provided any water or sewer service for at least five years, (v) did not levy any ad valorem tax in the current year, (vi) has been for at least five years entirely located within or coterminous with the corporate limits of a city or town, and (vii) at the time of the annexation of the area of the district by that city or town, the city or town assumed all assets and liabilities of the district, the board of that

district by unanimous vote may petition the board of commissioners of the county in which the district is located to dissolve the district. Upon receipt of the petition, the board of commissioners shall notify the Department and the governing body of the city or town within which the district lies of the receipt of the petition. If the Commission, the county board of commissioners, and the governing body of the city or town shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. All taxes levied by the sanitary district that were levied prior to, but that are collected after, the dissolution shall vest in the city or town. All property held, owned, controlled, or used by the sanitary district upon the dissolution or that may later be vested in the sanitary district, and all judgments, liens, rights, and causes of actions in favor of the sanitary district shall vest in the city or town. At the dissolution, taxes owed to the sanitary district shall be collected by the city or town.

(b) The procedure for the dissolution of a sanitary district set out in this section is an alternative to the procedure set out in G.S. 130A-73 and any sanitary district to which both that section and this section apply may be dissolved under either section."

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

EXPLANATION OF SENATE BILL 138 (PCS):
Dissolve Sanitary District

TO: House Finance Committee
FROM: Jeff Hudson and Martha Walston, Staff Attorneys
DATE: July 22, 1998
SPONSOR: Senator Odom

Senate Bill 138 was recommended to the 1997 Regular Session by the Environmental Review Commission. The companion bill, House Bill 189, was introduced by Representative Arlie Culp. These bills, as introduced, amended the North Carolina Drinking Water Act so that it conforms to federal law. The conforming changes became law with the enactment of House Bill 189 during the 1997 Regular Session. The Third Edition of Senate Bill 138 removed the original provisions of the bill, allowed certain privately-owned community water systems to apply for loans and grants from the Drinking Water Treatment Revolving Loan Fund, and provided for an alternative procedure for dissolution of certain sanitary districts. **The proposed House Committee Substitute removes the provisions of the bill regarding privately-owned community water systems, and retains the provision setting out an alternative procedure for dissolution of certain sanitary districts.**

Section 1: Allows an alternative procedure for dissolution of certain sanitary districts.

Section 1 establishes an alternative procedure for the dissolution of certain sanitary districts. The board of a sanitary district, by unanimous vote, may petition the board of commissioners of the county in which the district is located to dissolve the district when the district:

- Is located entirely within one county
- Has no outstanding indebtedness
- At the time of its creation, was not located entirely within or coterminous with the corporate limits of a city or town
- Has not provided any water or sewer service for at least five years
- Did not levy any property tax in the current year
- Has been entirely located within or coterminous with the corporate limits of a city or town for at least five years
- At the time of annexation of the area of the district by that city or town, the city or town assumed all assets and liabilities of the district

Upon receipt of a petition, the board of commissioners must notify the Department of Health and Human Services and the governing body of the city or

town where the petitioning district lies. If the Commission for Health Services (Commission), the county board of commissioners, and the governing body of the city or town agree to the petition, the Commission will dissolve the district. Matters related to the sanitary district's collection of taxes, property, and causes of action will pass to the city or town. This dissolution procedure is an alternative to that established in G.S. 130A-73. Any sanitary district to which both sections apply may be dissolved under either section.

Section 2 makes the act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 138
House Committee Substitute Favorable 7/15/98
Corrected Copy 7/17/98
Proposed House Committee Substitute S138-PCS6862-LA001

Short Title: Dissolve Sanitary Dist. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ALTERNATIVE PROCEDURE FOR DISSOLUTION OF A SANITARY DISTRICT THAT HAS NO INDEBTEDNESS AND THE TERRITORY OF WHICH HAS BEEN ENTIRELY ANNEXED.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-73.1. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.**

(a) When the boundaries of a sanitary district that (i) is located entirely within one county, (ii) has no outstanding indebtedness, (iii) at the time of its creation was not located entirely within or coterminous with the corporate limits of a city or town, (iv) has not provided any water or sewer service for at least five years, (v) did not levy any ad valorem tax in the current year, (vi) has been for at least five years entirely located within or coterminous with the corporate limits of a city or town, and (vii) at the time of the annexation of the area of the district by that city or town, the city or town assumed all assets and liabilities of the district, the board of that district by unanimous vote may petition the board of commissioners of the county in which the district is located to dissolve the district. Upon receipt of the petition, the board of commissioners shall notify the Department and the governing body of the city or town within which the district lies of the receipt of the petition. If the Commission,

the county board of commissioners, and the governing body of the city or town shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. All taxes levied by the sanitary district that were levied prior to, but that are collected after, the dissolution shall vest in the city or town. All property held, owned, controlled, or used by the sanitary district upon the dissolution or that may later be vested in the sanitary district, and all judgments, liens, rights, and causes of actions in favor of the sanitary district shall vest in the city or town. At the dissolution, taxes owed to the sanitary district shall be collected by the city or town.

(b) The procedure for the dissolution of a sanitary district set out in this section is an alternative to the procedure set out in G.S. 130A-73 and any sanitary district to which both that section and this section apply may be dissolved under either section."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 138 A BILL TO BE ENTITLED AN ACT TO ALLOW AN ALTERNATIVE PROCEDURE FOR DISSOLUTION OF A SANITARY DISTRICT THAT HAS NO INDEBTEDNESS AND THE TERRITORY OF WHICH HAS BEEN ENTIRELY ANNEXED.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to House committee substitute bill (# 2), ☑ which changes the title, unfavorable as to ~~original bill~~ (House Committee Substitute Bill # 1 ~~), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~,

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

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

☐ 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)

VISITOR REGISTRATION SHEET

Name of Committee: House Finance

Date: July 28, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Wayne Eberhardt	Cary
Mike Latta	NCI, Raleigh Box 20463 Raleigh 27619
GENE BOYCE	Class Counsel Shaver/Smith cases Box 20837, Raleigh 27619
Helen Lipman	Meck. Co. DSS
Cam Over	BPMHL
Andy Romanet	N.C.L.M.
Steve Woodson	NC Farm Bureau
Richard Bynum	Maupin, Taylor & Ellis
Paula Sours	Maupin Taylor & Ellis
Mark Gleason	Capitol Group
Paul Lamb	Lamb Consulting
David S. Lanier	ZDA, PA

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Alice Garland	Electricities
Mark Mendenhall	Poyner Spruill
[illegible]	NCHBA
Stacey Slaughter	Legislative Intern
Betty Davis	DOR
Patti Stowell	DOR
Danny Massey	DOR
Guy Radford	DOR
Doug Roy	NC DOT

VISITOR REGISTRATION SHEET

Horse Farms
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Crissy Parker	Bone & Associates
Amy Fullbright	Hunton & Williams
Joan Pierce	Capital Group
Don Beane	Jr Capital Group
Andy Eller	NCRMA
Fran Preston	NCRMA
Jim Brode	Brode Call & Stamps
Sabra Faires	DOR
Benny Scarboro	NC Horse Council
Jane Upchurch	CPA
Jon Geiger	Moore & Van Allen
Florence Schoonover	

VISITOR REGISTRATION SHEET

Horse Pasture

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Marquette Hurdle	
V C McBride	WCSA
Paul Wilms	NCMBA
[illegible]	DOT, DOA, the GOV.
Mac Boxley	NC Aggregates
Roger Bone	Bone & Assoc.
[illegible]	WCSR

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, JULY 22, 1998

8:30 A.M. ROOM 544-LOB

Rep. Gray called the meeting to order and introduced the Pages.

HB-1492/SB-1354 CLEAN WATER/NATURAL GAS BONDS

Rep. Dickson moved to adopt the Proposed Committee Substitute for discussion. So moved. Rep. Carpenter explained the bill. Rep. Brown moved for a favorable report, unfavorable to the original bill.

Rep. Dickson sent forth a technical amendment which Rep. Gray read. The vote was taken and the amendment was adopted.

Rep. Dickson asked if there were any opposition to this issue. Rep. Carpenter replied. Rep. Dickson also questioned staff of the language on Page 31. Mr. Steve Rose, Research Division explained.

Rep. Goodwin sent forth an amendment, explained and urged adoption. Rep. Carpenter he was not opposed to the amendment. Rep. Hackney wanted additional clarification. Mr. Chris Hagerty, NC Electric Cooperatives, addressed members. Rep. Carpenter made additional comments. Ms. Martha Harris, Bill Drafting Division also gave an additional explanation. Rep. Starnes asked Mr. Hagerty for an example of how this amendment would apply. He responded. Rep. Brown asked if the amendment would protect private industries and Mr. Hagerty responded. Rep. Hackney questioned staff about the clean water objectives and Ms. Harris replied. The vote was taken and the amendment was adopted.

Rep. Womble questioned an opposition by the Department of Economic and Natural Resources. Rep. Carpenter responded. Mr. Bill Holman, Department of Economic and Natural Resources addressed members. He advised of their work with the Senate and explained some amendments that had been recommended to the Senate when they were discussing the bill. Rep. Carpenter also addressed the comments made by Mr. Holman in reference to the proposed amendments to the Senate. He further explained that if approved, this would go to a conference committee and all concerns, if any, would be addressed and worked out in conference. Rep. Womble then asked who decides who gets

grants. Rep. Carpenter responded. Rep. Gamble asked about an out of state company servicing his district with gas and why there were allowed rather than an North Carolina company. Mr. Steve Rose explained this. Rep. Cole was concerned about annexation situations that may never utilize the facilities. Rep. Carpenter addressed his concerns. Rep. Hackney inquired about expansion funds and Mr. Rose replied. Rep. Nesbitt asked Mr. David Crotts, Fiscal Research Division about the states indebtedness and he responded. Rep. Nesbitt then shared concerns of how this would affect the states indebtedness in the future. Sen. Kerr (sponsor of the senate version) was recognized to address Rep. Nesbitts comments. Rep. Luebke asked about an amendment which had been offered in the Senate regarding watersheds. He requested to hear from the Sierra Club and the Conservation Council. Mr. Nat Mund, Conservation Council, addressed members. Mr. Bill Holman, Department of Economic and Natural Resources spoke on the watershed issue. Mr. Jim Blackburn, County Commissioners Association also addressed this issue. Rep. Luebke advised he would not offer the same amendment in our committee but asked Rep. Carpenter if he would consider it when the conference committee meets. Rep. Nichols questioned grants and lending money for private industry. Mr. Steve Rose responded. Rep. Nichols then asked about interest rates and collateral. Mr. Rose answered again. Rep. Nichols then shared concerns/comments. Rep. Brown spoke in favor of the bill again and called the question. Motion carried to call the question. The vote was taken on the bill and given a favorable report, unfavorable to the original bill.

The meeting adjourned at 9:50.

Rep. Gray, Chairman

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

WEDNESDAY, JULY 22, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Gray

BILLS FOR DISCUSSION:

HB-1492 - Clean Water/Natural Gas Bonds = SB-1354	Rep. Carpenter
SB-138 - PVT H20 Sys. Loan/Dissolve San. Dist.	Rep. Rayfield

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1354
Finance Committee Substitute Adopted 6/17/98
Third Edition Engrossed 6/24/98
Proposed House Committee Substitute S1354-PCS4700-RB

Short Title: Rural Infrastructure Bonds. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO ADDRESS STATEWIDE RURAL INFRASTRUCTURE NEEDS BY PROVIDING FUNDS (1) FOR GRANTS AND LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION AND WATER REUSE PROJECTS AND (2) FOR GRANTS, LOANS, OR OTHER FINANCING TO PUBLIC OR PRIVATE ENTITIES FOR CONSTRUCTION OF NATURAL GAS FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Rural Infrastructure Bond Act of 1998".

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

(a) Clean Water Bonds.

(1) $465,000,000 to provide State matching funds required to receive federal wastewater or water supply assistance funds and to provide additional funding for the Clean Water Revolving Loan and Grant

Fund established in Chapter 159G of the General Statutes or to provide funding by grants to local government units for wastewater treatment and water supply and distribution needs;

(2) $320,000,000 to provide loans to local government units to finance all or a portion of the cost of construction, improvements, enlargements, extensions, and reconstruction of water supply and distribution systems, wastewater collection systems, wastewater treatment works, water conservation projects, and water reuse projects.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity, the criteria established by Chapter 159G of the General Statutes, and the guidelines established by the United States Environmental Protection Agency Hardship Grants Program shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply, on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management, and on having a capital improvement plan.

(b) Natural Gas Bonds.

$215,000,000 to provide grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

Section 3. Definitions. As used in this act, unless the context otherwise requires:

(1) "Bond rating" means the numerical rating of a unit of local government developed by the NCMC. The rating formula is based on 100 being a theoretically "perfect" unit of local government and is an assessment of the creditworthiness of the unit. Units of local government with a rating below 75 or with no ratings have limited, if any, access to the private markets for financing water and sewer or other debt.

(2) "Bonds" means bonds issued under this act.

(3) "Capacity grant" means a grant awarded by the Rural Economic Development Center to a local government unit to pay all or a portion of the cost associated with the planning and writing of a grant or loan application, a capital improvement plan, or other efforts that support growth and development of rural areas.

(4) "Capital improvement plan" means a report that identifies water and sewer infrastructure and capital needs that address planned and strategic growth. It shall include an assessment of current water and wastewater systems and a projection of those infrastructure needs over a 20-year horizon. The report shall take into consideration government mandates, usefulness of the improvements to the community and the effect on both short and long-term operation and maintenance of the scheduled improvements and identifies alternatives for meeting the identified need including regionalization, consolidation and system mergers, water reuse and conservation.

(5) "Clean Water Revolving Loan and Grant Act" means Chapter 796 of the 1987 Session Laws, as amended from time to time, codified as Chapter 159G of the General Statutes.

(6) "Clean Water Revolving Loan and Grant Fund" means the Clean Water Revolving Loan and Grant Fund as defined in the Clean Water Revolving Loan and Grant Act.

(7) "Cost" means, without intending thereby to limit or restrict any proper definition of this term in financing the cost of facilities or purposes authorized by this act:

a. The cost of constructing, reconstructing, enlarging, acquiring, and improving facilities, and acquiring equipment and land therefor,

b. The cost of engineering, architectural, and other consulting services as may be required,

c. Administrative expenses and charges,

d. Finance charges and interest prior to and during construction and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction,

e. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs of bond and note issuance, to the extent and as determined by the State Treasurer,

f. The cost of reimbursing the State for any payments made for any cost described above, and

g. Any other costs and expenses necessary or incidental to the purposes of this act.

Allocations in this act of proceeds of bonds to the costs of a project or undertaking in each case may include allocations to pay the costs set forth in items c., d., e., f., and g. in connection with the issuance of bonds for the project or undertaking.

(8) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company, or other insurance institution, a corporation, investment banking firm, or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.

(9) "Economically depressed area" means any of the following:

a. An economically distressed county as defined in G.S. 143B-437.01.

b. That part of a rural county whose poverty rate is at least one hundred fifty percent (150%) of the State poverty rate. For the purpose of this section, the poverty rate is the percentage of the population with income below the latest annual federal poverty guidelines issued by the United States Department of Health and Human Resources.

c. That part of a rural county that experiences an actual or imminent loss of manufacturing jobs in a number that is equal to or exceeds five percent (5%) of the total number of manufacturing jobs in the part.

(10) "Local government units" means local government units as defined in the Clean Water Revolving Loan and Grant Act.

(11) "NCMC" means the North Carolina Municipal Council, Inc., a nonprofit North Carolina corporation which provides bond ratings, or any successor thereto. In the event such corporation dissolves or no longer performs the functions contemplated herein, such term shall mean that comparable corporation designated by the State Treasurer.

(12) "Notes" means notes issued under this act.

(13) "Par formula" means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:

a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible,

b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or

c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

(14) "Rural county" means a county with a density of fewer than 200 people per square mile based on the United States census.

(15) "Rural Economic Development Center" means the Rural Economic Development Center, Inc., a nonprofit North Carolina corporation, or any successor thereto. In the event such corporation dissolves or no longer performs the functions contemplated herein, such term shall mean that comparable corporation designated by the Governor.

(16) "State" means the State of North Carolina.

(17) "Supplemental grant" means a grant awarded by the Rural Economic Development Center to a local government unit to assist in financing wastewater collection systems, wastewater treatment works, water conservation projects, water reuse projects, or water supply systems. Supplemental grant funds shall supplement other funding and shall not represent more than fifty percent (50%) of the total costs of the wastewater collection systems, wastewater treatment works, water conservation projects, water reuse projects, or water supply systems financed.

(18) "Unsewered communities" means those communities lacking centralized, publicly owned wastewater collection systems and wastewater treatment works.

(19) "Wastewater collection systems" means wastewater collection systems as defined in the Clean Water Revolving Loan and Grant Act.

(20) "Wastewater treatment works" means wastewater treatment works as defined in the Clean Water Revolving Loan and Grant Act.

(21) "Water conservation projects" include, but are not limited to, any construction, repair, renovation, expansion, replacement of components, or other capital improvement, including related equipment and land acquisition, designed to:

a. Eliminate the wasteful or unnecessary use or loss of water in the operations of a wastewater collection system, wastewater treatment works, or water supply system; or

b. Enhance the operation of a wastewater collection system, wastewater treatment works, or water supply system to provide a more efficient use of water.

(22) "Water Pollution Control Revolving Fund" means the fund described by G.S. 159G-4(a) and G.S. 159G-5(c).

(23) "Water reuse" means the actual use or application of treated wastewater in or on areas which require water but do not require potable water quality.

(24) "Water supply systems" means water supply systems as defined in the Clean Water Revolving Loan and Grant Act.

Section 4. Authorization of bonds and notes. (a) Clean Water Bonds. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Clean Water Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Clean Water Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding seven hundred eighty-five million dollars ($785,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

(b) Natural Gas Bonds. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Natural Gas Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Natural Gas Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding two hundred fifteen million dollars ($215,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

Section 5. Uses of bond and note proceeds. (a) Clean Water Bonds. The proceeds of Clean Water Bonds and notes shall be used for the purpose of making loans and grants to local governments as follows:

(1) The proceeds of three hundred fifty-five million dollars ($355,000,000) of Clean Water Bonds shall be used by the Department of Environment and Natural Resources to provide State matching funds required to receive federal wastewater or water supply assistance funds, for grants to local government units for the same purposes for which funds in the Clean Water Revolving Loan and Grant Fund may be used, and for grants to fund hardship projects in accordance with the guidelines established by the United States Environmental Protection Agency Hardship Grants Program. The grants shall be made for the

purpose of paying the cost of water supply systems, wastewater collection systems, and wastewater treatment works, water conservation projects, and water reuse projects.

Of the proceeds of the three hundred fifty-five million dollars ($355,000,000) referred to in this Section 5(a)(1), the sum of three hundred million dollars ($300,000,000) shall be allocated as follows:

a. High-Unit Cost Wastewater Account
   1. Reserved for grants to local government units whose bond rating is less than 75 or who have no bond rating $70,000,000
   2. Reserved for grants to local government units whose bond rating is 75 or greater..... $80,000,000

b. High-Unit Cost Water Supply Account
   1. Reserved for grants to local government units whose bond rating is less than 75 or who have no bond rating $70,000,000
   2. Reserved for grants to local government units whose bond rating is 75 or greater $80,000,000

The proceeds may be (i) transferred directly to the Clean Water Revolving Loan and Grant Fund to make grants, (ii) used to make grants directly to the appropriate local government qualifying for a grant from the Clean Water Revolving Loan and Grant Fund, (iii) used for any combination of (i) and (ii), or (iv) used in such other manner as shall effectuate the clean water purposes of this act.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity, the criteria established by Chapter 159G of the General Statutes, and the guidelines established by the United States Environmental Protection Agency Hardship Grants Program shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply, on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management, and on having a capital improvement plan.

Of the proceeds of the three hundred fifty-five million dollars ($355,000,000) referred to in this Section 5(a)(1), the sum of thirty-five million dollars ($35,000,000) shall be used to provide State funds necessary for the 1999-2000, 2000-2001, 2001-2002,

2002-2003, and 2003-2004 fiscal years to match the federal wastewater or water supply assistance funds deposited in the Water Pollution Control Revolving Fund or another fund that is used to pay the cost of water supply systems, wastewater collection systems, or wastewater treatment works and is eligible to receive federal matching funds, unless the General Assembly has provided the required match through other sources, in which event this priority shall cease to exist to the extent of the availability of the other sources. The Department of Environment and Natural Resources shall certify to the State Treasurer the amount of funds required for the State match for each of the fiscal years ending June 30, 1999, June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, and June 30, 2004, and the extent to which the General Assembly has provided other funds for this purpose. Upon certification each year of the amount of funds required for the State match for that fiscal year, the State Treasurer may issue from the thirty-five million dollars ($35,000,000) the amount certified up to thirty-five million dollars ($35,000,000). Upon certification for the State match required for the fiscal year ending June 30, 2004, the State Treasurer may issue the remaining balance of the thirty-five million dollars ($35,000,000) of the Clean Water Bonds authorized by this subdivision for the purpose of funding the State match for that fiscal year and for any other purposes authorized by this subdivision. The proceeds of the bonds necessary for the State match for each fiscal year shall be deposited in the Water Pollution Control Revolving Fund or another appropriate fund or account determined by the State Treasurer.

Of the proceeds of the three hundred fifty-five million dollars ($355,000,000) referred to in this Section 5(a)(1) above, the sum of twenty million dollars ($20,000,000) shall be used to provide hardship grants to eligible local government units to assist with wastewater treatment works and wastewater collection systems. Such grants shall be awarded and administered by the Department of Environment and Natural Resources in accordance with the guidelines established by the United States Environmental Protection Agency Hardship Grants Program.

Although public necessity, the criteria established by Chapter 159G of the General Statutes, and the guidelines established by the United States Environmental Protection Agency Hardship Grants Program shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply, on the willingness and ability of local government units to meet their responsibilities through sound fiscal

policies, creative planning, and efficient operation and management, and on having a capital improvement plan.

(2) The proceeds of sixty million dollars ($60,000,000) of Clean Water Bonds shall be used for the purpose of making grants to local government units to pay the cost of clean water projects in connection with the location of industry to, and expansion of industry in, the State. These grants shall be awarded and administered by the Department of Commerce. These funds shall be applied to pay the costs of grants awarded in the same manner as funds in the Industrial Development Fund created in G.S. 143B-437.01(a), for use in accordance with G.S. 143B-437.01(a), subject to the further limitations on the provisions of G.S. 143B-437.01(a) set forth below, and shall be applied to pay the costs of grants awarded in the same manner as funds in the Utility Account of the Industrial Development Fund created in G.S. 143B-437.01(b1), for use in accordance with G.S. 143B-437.01(b1), subject to the further limitations on the provisions of G.S. 143B-437.01(b1) set forth below. In applying the provisions of G.S. 143B-437.01(a) or G.S. 143B-437.01(b1), as the case may be, the following exceptions shall apply:

a. The funds shall be used only for grants to local governments, not for loans.

b. Grants shall be awarded only to projects the Secretary of Commerce finds will have a favorable impact on the clean water objectives of the State.

c. The only purposes for which grants may be made are construction of or improvements to new or existing water or sewer distribution lines or equipment, construction of or improvements to new or existing wastewater treatment works, or improvements that will expand the capacity of existing wastewater treatment works or water supply systems.

d. The projects may be located only in counties that are economically distressed as defined in G.S. 143B-437.01 or have a population of less than 50,000.

e. Grants may be made with respect to the following industries as defined in G.S. 105-129.2: manufacturing and processing, and warehousing and wholesale trades.

f. No match is required for the grants.

g. The provisions of G.S. 143B-437.01(a) or G.S. 143B-437.01(b1), as the case may be, that limit the expenditure of funds to costs of utility lines or facilities located on the site of the new or proposed industrial building or that are directly related to the operation of the

specific industrial activity at the building, shall not apply if the utility lines or facilities being provided will further the clean water objectives of the State.

The General Assembly finds that the purpose of providing water and sewer distribution lines and wastewater treatment works in economically distressed counties is to provide clean water in North Carolina in several different ways. First, these projects will reduce industrial reliance on wells, septic tanks, and other similar facilities. Second, when a distribution line is extended to an industrial facility in an area not otherwise served by water and sewer infrastructure, residents, other businesses, and local governments can hook into the distribution line, bringing clean water, wastewater treatment, or both to the unserved area. Also, the installation and expansion of water supply and wastewater treatment facilities to provide water supply and wastewater treatment in connection with new or expanding industry will result in additional water supply and treatment facilities available to the residents, other businesses, and local governments in the area where the installation or expansion occurs.

The proceeds of the Clean Water Bonds, issued for the purpose described in this Section 5(a)(2), shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of the cost for the purpose for which the grant is made. The Department of Commerce shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made.

(3) The proceeds of fifty million dollars ($50,000,000) of Clean Water Bonds shall be used to provide supplemental and capacity grants to eligible local government units to match federal, State, and other grant or loan program funds to plan or improve needed water and sewer projects in economically depressed areas of North Carolina. Such grants shall be awarded and administered by the Rural Economic Development Center. Those proceeds shall be allocated as follows:

a. Supplemental Grants $40,000,000
b. Capacity Grants $10,000,000

The Rural Economic Development Center shall certify to the State Treasurer the amount of funds required, not to exceed eight million dollars ($8,000,000) for supplemental grants, not to exceed two million dollars ($2,000,000) for capacity grants, and not to exceed a total of ten million dollars ($10,000,000) in supplemental and capacity grants, for each of the fiscal years ending June 30, 1999, June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, and June 30, 2004. Upon certification each year of

the amount of funds required for that fiscal year, the State Treasurer may issue the amount certified up to ten million dollars ($10,000,000). Upon certification for the fiscal year ending June 30, 2004, the State Treasurer may issue the remaining balance of the fifty million dollars ($50,000,000) of the Clean Water Bonds authorized by this subdivision for any other purposes authorized by this subdivision.

Grants made from the proceeds of this fifty million dollars ($50,000,000) for supplemental grants shall be based on the following criteria:

a. The applicant shall be a local government unit.

b. The applicant shall be a rural county or a local government unit located in a rural county.

c. First priority shall be given to a water supply system, wastewater collection system, or wastewater treatment work that creates or retains jobs. A water supply system, wastewater collection system, or wastewater treatment work shall also receive funding priority if the project is located in an economically distressed county as defined by G.S. 143B-437.01.

d. A water supply system, wastewater collection system, or wastewater treatment work that is proposed in a nondistressed county must meet at least one of the following criteria: (i) be located in that part of a rural nondistressed county where the poverty rate is at least one hundred fifty percent (150%) of the State poverty rate, (ii) be located in that part of a rural nondistressed county where the unemployment rate is at least double the State unemployment rate for the most recent reporting period available, or (iii) be located in that part of a rural nondistressed county that experiences an actual or imminent loss of jobs in a number that equals or exceeds five percent (5%) of the total number of jobs in that part of the county. Any grant awarded for a water supply system, wastewater collection system, or wastewater treatment work in a nondistressed county shall be matched on a dollar-for-dollar basis in the amount of the grant awarded.

Although public necessity and the criteria listed above shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply, on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient

operation and management, and on having a capital improvement plan. However, funds shall not be expended for the repair or replacement of low-pressure pipe wastewater systems.

The Rural Economic Development Center shall award grants to units of local government for the purposes authorized by this Section 5(a)(2) in accordance with the criteria set forth above. When the Rural Economic Development Center authorizes a grant, the Rural Economic Development Center shall notify the State Treasurer of the authorization and shall submit to the State Treasurer the grant application and records relevant to the grant's authorization. The State Treasurer shall review the grant and relevant documents to verify that the grant complies with the requirements of this act. The State Treasurer shall complete the review no later than 30 days after the receipt of the grant application and relevant records from the Rural Economic Development Center, and shall notify the Rural Economic Development Center that the review has been completed and of the State Treasurer's findings.

The proceeds of the Clean Water Bonds issued for the purpose described in this section shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of costs for the purposes for which the grant is made. The Rural Economic Development Center shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made and shall furnish such records to the State Treasurer at the time a request for payment to or on behalf of a grantee is to be made.

At the end of each fiscal year, the Rural Economic Development Center shall provide to the State Treasurer any records that document the timing and purposes of the expenditures by the grantee units of local government of the proceeds of the grants funded from the proceeds of the Clean Water Bonds during that fiscal year that have not already been provided to the State Treasurer.

(4) The proceeds of three hundred twenty million dollars ($320,000,000) of Clean Water Bonds shall be used for the purpose of making loans to local government units to pay the cost of water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works. The proceeds shall be allocated as follows:

a. Wastewater collection systems and wastewater treatment works.
   1. Reserved for loans to local government units whose bond rating is less than 75 or who have no bond rating.....$10,000,000
   2. Reserved for loans to local government units whose bond rating is 75 or more.....$150,000,000

b. Water supply and distribution systems and water conservation projects.
   1. Reserved for loans to local government units whose bond rating is less than 75 or who have no bond rating.....$10,000,000
   2. Reserved for loans to local government units whose bond rating is 75 or more.....$150,000,000

The proceeds shall be used to make loans directly to local government units qualifying for a loan from the Clean Water Revolving Loan and Grant Fund or loaned in such other manner as shall effectuate the purposes of this act. To qualify for a loan for the purpose of paying the cost of water supply systems, a local government unit must have a water supply facility plan approved by the Department of Environment and Natural Resources. A water supply facility plan submitted by a local government unit to the Department under G.S. 143-355(l) will be sufficient to meet this requirement. To qualify for a loan for the purpose of paying the cost of wastewater collection systems or wastewater treatment works, a local government unit must have a wastewater facility plan approved by the Department of Environment and Natural Resources. A wastewater facility plan must project future wastewater treatment needs, must present a long-range plan to meet those needs, and must include plans for system operations and maintenance of the facilities being built with the bond proceeds. In addition, great emphasis shall also be placed on having a capital improvement plan.

The Department of Environment and Natural Resources shall set the priorities and determine the eligibility of local government units for these loans in accordance with Section 10 of this act. The form of the loans and the details thereof including, without limitation, the maturity, interest rate, and amortization schedule shall be determined, from time to time, by the State Treasurer. In making these determinations, the State Treasurer shall consider the purpose of the loans, the ability of local government units to repay the loans, and the security for the loans. The interest rates on these loans shall reflect the self-supporting nature of the loan program and shall be sufficient to cover

substantially all payments of debt service on the three hundred twenty million dollars ($320,000,000) of Clean Water Bonds and the issuance costs and administrative expenses associated with the issuance of these bonds and the making of these loans, subject to any applicable requirements of the federal tax law.

Repayments of the loans shall be credited to the General Fund and may be used to pay, directly or indirectly, debt service on the bonds and notes issued. Repayments may be initially placed into such fund or account as may be determined by the State Treasurer for the purpose of determining compliance with applicable requirements of the federal tax law and shall be expended and disbursed therefrom under the direction and supervision of the Director of the Budget.

(5) If bond proceeds remain unspent, five years from the date on which the bonds were issued, then the General Assembly may at any session after that five-year period of time increase or decrease the allocations of the proceeds of the Clean Water Bonds set forth in (1), (2), (3), (4), and (5) above, so long as the aggregate amount of the allocations does not exceed seven hundred eighty-five million dollars ($785,000,000).

(b) Natural Gas Bonds. The proceeds of Natural Gas Bonds and notes shall be used for the purpose of providing grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for the costs of constructing natural gas facilities, including pipelines, compressors, interests in real property, and related equipment for the delivery of natural gas in order to facilitate the expansion of natural gas facilities to unserved areas of the State in accordance with the findings of the General Assembly described in Section 15 of this act.

Section 6. Allocation of proceeds. (a) Clean Water Bonds. The proceeds of Clean Water Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Clean Water Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer and shall be disbursed as provided in this act. Moneys in the Clean Water Bonds Fund shall be allocated and expended as provided in this act.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source for deposit to the Clean Water Bonds Fund may be placed in the Clean Water Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Clean Water Bonds Fund or any separate clean water fund or account established under this act may be invested from time to time by the State

Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment earnings with respect to grant moneys to the extent otherwise directed or restricted by the terms of the grant, may be (i) credited to the Clean Water Bonds Fund or any separate clean water fund or account established under this act, (ii) used to pay debt service on the bonds authorized by this act, (iii) used to satisfy compliance with applicable requirements of the federal tax law, or (iv) transferred to the General Fund of the State.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for making grants and loans authorized by this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

(b) Natural Gas Bonds. The proceeds of Natural Gas Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Natural Gas Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer, and shall be disbursed as provided in this act. Moneys in the Natural Gas Bonds Fund shall be allocated and expended as provided in this act. The proceeds may be used in accordance with G.S. 62-159 or may be distributed in accordance with the provisions of legislation enacted by the General Assembly in 1998 or later providing for the allocation of the bond proceeds for the purposes provided in this act.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any natural gas grants authorized by this act may be placed by the State Treasurer in the Natural Gas Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Natural Gas Bonds Fund or any separate natural gas fund or account established under this act may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment earnings with respect to grant money to the extent otherwise directed or restricted by

the terms of the grant, may be (i) credited to the Natural Gas Bonds Fund or any separate natural gas fund or account established under this act; (ii) used to pay debt service on the Natural Gas Bonds authorized by this act; (iii) used to satisfy compliance with applicable requirements of the federal tax law; or (iv) transferred to the General Fund of the State.

The proceeds of Natural Gas Bonds and notes may be used with any other moneys made available by the General Assembly for providing grants, loans, or other financing in accordance with this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of Natural Gas Bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act for construction of natural gas facilities shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

The North Carolina Utilities Commission shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division on the expenditure of moneys from the Natural Gas Bonds Fund.

(c) Costs. Allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in Section 3(6)c., d., e., f., and g. of this act in connection with the issuance of bonds for that capital improvement or undertaking.

Section 7. Election. The questions of the issuance of the bonds authorized by this act shall be submitted to the qualified voters of the State at an election to be held on the first Tuesday after the first Monday of November 1998. Any other primary, election, or referendum validly called or scheduled by law at the time the election on the bond question provided for in this section is held may be held as called or scheduled. Notice of the election shall be given in the manner and at the times required by G.S. 163-33(8). The election and the registration of voters therefor shall be held under and in accordance with the general laws of the State. Absentee ballots shall be authorized in the election.

The State Board of Elections shall reimburse the counties of the State for all necessary expenses incurred in holding the election that are in addition to those that would have otherwise been incurred, the same to be paid out of the Contingency and Emergency Fund or other funds available to the State Board of Elections.

Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The bond questions to be used in the ballots or voting systems shall be in substantially the following form:

"[ ] FOR [ ] AGAINST

the issuance of seven hundred eighty-five million dollars ($785,000,000) State of North Carolina Clean Water Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to make loans and grants to local government units to pay all or a portion of the cost of clean water projects."

"[ ] FOR [ ] AGAINST

the issuance of two hundred fifteen million dollars ($215,000,000) State of North Carolina Natural Gas Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to provide grants, loans, or other financing to public or private entities for construction of natural gas facilities in order to facilitate the expansion of natural gas facilities to unserved portions of the State."

If a majority of those voting on a bond question in the election vote in favor of the issuance of the bonds described in the question, those bonds may be issued as provided in this act. If a majority of those voting on a bond question in the election vote against the issuance of the bonds described in the question, those bonds shall not be issued.

The results of the election shall be canvassed and declared as provided by law for elections for State officers; the results of the election shall be certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Section 8. Issuance of bonds and notes. (a) Terms and Conditions. Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the

delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery, and bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as well as under this act.

(c) Manner of Sale; Expenses. Subject to determination by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate or rates of interest, which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or the notes, as the State Treasurer may determine. All expenses incurred in preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Notes; Repayment.

(1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

a. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;

b. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;

c. For the renewal of any loan evidenced by notes herein authorized;

d. For the purposes authorized in this act; and

e. For refunding bonds or notes as herein authorized.

(2) Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of

interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.

(e) Refunding Bonds and Notes. By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding bonds or notes issued pursuant to this act. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured.

(f) Tax Exemption. Bonds and notes shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes shall not be subject to taxation as to income.

(g) Investment Eligibility. Bonds and notes are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) Faith and Credit. The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. In addition to the State's right to amend any provision of this act to the extent it does not impair any contractual right of a bond owner, the State expressly reserves the right to amend any provision of this act with respect to the making and repayment of loans, the disposition of any repayments of loans, and any intercept provisions relating to the failure of a local government unit to repay a loan, the bonds not being secured in any respect by loans, any repayments thereof, or any intercept provisions with respect thereto.

Section 9. Variable interest rates. In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially or adversely affect the financial position

of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;

(2) Be additionally supported by a credit facility;

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Section 10. Special provisions governing clean water loans. (a) Scope. The provisions of this section shall apply to loans being made from the proceeds of bonds authorized by this act for clean water projects, other than from funds deposited in the Clean Water Revolving Loan and Grant Fund.

(b) Clean Water Bonds Loan Account. There is established in the Department of State Treasurer a special account to be known as the Clean Water Bonds Loan Account, which may include any special or segregated accounts the State Treasurer considers appropriate. There shall be deposited in the Clean Water Bonds Loan Account proceeds of the Clean Water Bonds and notes to be used to make loans, other than loans to be made through the Clean Water Revolving Loan and Grant Fund, to local government units for clean water projects as provided in this act.

Except as otherwise permitted by Section 5 of this act with respect to the use of investment earnings, all moneys accruing to the credit of the Clean Water Bonds Loan Account other than funds set aside for administrative expenses, including expenses related to determining compliance with applicable requirements of the federal tax law and costs of issuance, shall be used to make loans for the purposes provided in this act. The State Treasurer shall be responsible for making and administering all loans pursuant to the provisions of this section.

(c) Application for Loans; Hearings.

(1) Eligibility/Initial Hearing.

a. Prior to filing an application for a loan, a local government unit shall hold a public hearing. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

b. All applications for loans shall be filed with the Department of Environment and Natural Resources. The form of the application shall be prescribed by the Department and shall require any information necessary to determine the eligibility for a loan under the provisions of this section. All applications approved by the Department of Environment and Natural Resources shall be filed with the Local Government Commission. Each applicant shall furnish to the Department of Environment and Natural Resources and the Local Government Commission information in addition or supplemental to the information contained in its application, upon request.

c. A local government unit shall not be eligible for a loan unless it demonstrates to the satisfaction of the Department of Environment and Natural Resources and the Local Government Commission that:

1. The applicant is a local government unit;
2. The applicant has the financial capacity to pay the principal of and interest on its proposed loan as evidenced by the approval of the Local Government Commission;
3. The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations, and ordinances, whether federal, State, or local; and
4. The applicant has agreed by official resolution to adopt and place into effect a schedule of fees and charges or the application of other sources of revenue which will provide adequate funds for proper operation, maintenance, and administration of the project and repayment of all principal and interest on the loan.

(2) Assessment. The Department of Environment and Natural Resources may require any applicant to file with its application an assessment of the impact the project for which the funds are sought will have upon meeting the facility needs of the area within which the project is to be located.

(3) Hearing by the Department of Environment and Natural Resources or the Local Government Commission. A public hearing may be held by the Department of Environment and Natural Resources or

the Local Government Commission at any time on any application. Public hearings may also be held by the Department of Environment and Natural Resources in its discretion upon written request from any citizen or taxpayer who is a resident of the county or counties in which the project is to be located or a resident of the local government unit that proposes to borrow moneys under this act, if it appears that the public interest will be served by the hearing. The written request shall set forth each objection to the proposed project or other reason for requesting a hearing on the application and shall contain the name and address of the persons submitting it. In deciding whether to grant a request for a hearing on an application, the Department of Environment and Natural Resources may consider the application, the written objections to the proposed project, and the facility needs and shall determine if the public interest will be served by a hearing. The determination by the Department of Environment and Natural Resources shall be conclusive, and all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application.

(4) Petition for Vote. A petition, demanding that the question of whether to enter into a loan agreement with the State under this act be submitted to voters, may be filed with the clerk of the local government unit applying for the loan within 15 days after the public hearing required by this section. The petition's sufficiency shall be determined and a referendum, if any, shall be conducted according to the standards, procedures, and limitations set out in G.S. 159-60 through G.S. 159-62.

(d) Priorities.

(1) Determination. Determination of priorities to be assigned each eligible project shall be made semiannually by the Department of Environment and Natural Resources during each fiscal year. Every eligible project shall be considered by the Department of Environment and Natural Resources with every other project eligible during this same priority period.

(2) Priority Factors. All applications for loans under this act shall be assigned a priority by the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall establish other priority factors criteria by rule.

(3) Assignment of Priority. A written statement relative to each priority assigned shall be prepared by the Department of Environment and Natural Resources and shall be attached to the application. The priority assigned shall be conclusive.

(4) Failure to Qualify. If an application does not qualify for a loan as of the prior period in which the application was eligible for

consideration by reason of the priority assigned, the application shall be considered during the next succeeding priority period upon request of the applicant. If the application again fails to qualify for a loan during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time and may amend any pending application to include additional data or information.

(5) Withdrawal of Commitment. Failure of an applicant within one year after the date of acceptance of the loan to arrange for necessary financing of the proposed project or award of the contract of the construction of the proposed project shall constitute sufficient cause for withdrawal of the commitment. Prior to withdrawal of a commitment, the Department of Environment and Natural Resources shall give due consideration to any extenuating circumstances presented by the applicant as reasons for failure to arrange necessary financing or to award a contract, and the commitment may be extended for an additional period of time if, in the judgment of the Department of Environment and Natural Resources, the extension is justified.

(e) Disbursement. To be eligible to receive the loans provided for in this section, a local government unit must arrange to borrow the amounts necessary pursuant to rules adopted by the Local Government Commission. No funds shall be disbursed until the Department of Environment and Natural Resources gives a certificate of eligibility to the effect that the applicant meets all eligibility criteria and that all procedural requirements of this act have been met. The maximum principal amount of a loan shall be one hundred percent (100%) of the cost of any eligible project.

(f) Intercept. The governing body of a local government unit shall by resolution authorize to be included in its loan agreement a provision authorizing the State Treasurer, upon failure of the local government unit to make a scheduled repayment of the loan, to withhold from the local government unit any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan. In such event, notwithstanding any other provision of law, the State Treasurer is authorized to withhold and apply such funds to the repayment of the loan, except that such funds shall not be withheld if (i) before the execution of the loan agreement, such funds have been legally pledged to secure special obligation bonds or other obligations of the local government unit, or (ii) after the execution of the loan agreement, such funds are legally pledged to secure special obligation bonds or other obligations of the local government unit as authorized in this subsection. After the execution of a loan agreement, all or any portion of the State funds specified in the loan agreement to be so withheld may be pledged to secure special obligation bonds

or other obligations of the local government unit only with the prior written consent of the State Treasurer.

The State Treasurer shall notify the Secretary of Revenue and the State Controller of the amount to be withheld from the local government unit, and the Secretary of Revenue and the State Controller shall transfer to the State Treasurer the amount so requested to be applied by the State Treasurer to the repayment of the loan.

(g) Inspection. Inspection of a project for which a loan has been made under this act may be performed by qualified personnel of the Department of Environment and Natural Resources or may be performed by qualified engineers registered in this State approved by the Department of Environment and Natural Resources. No person shall be approved to perform inspections who is an officer employed by the local government unit to which the loan was made or who is an owner, officer, employer, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan was made. For the purpose of payment of inspection fees, inspection services shall be included in the term "cost" as used in this act.

(h) Rules. The State Treasurer, the Local Government Commission, and the Department of Environment and Natural Resources may adopt, modify, and repeal rules necessary for the administration of their respective duties under this act. Uniform rules may be jointly adopted where feasible and desirable, and no rule, jointly adopted, may be modified or revoked except upon concurrence of all agencies involved.

(i) Federal Grants and Loans. In order to carry out the purposes of this act to secure the greatest possible benefits to the citizens of this State of the funds appropriated, the State Treasurer, the Local Government Commission, and the Department of Environment and Natural Resources shall adopt rules and criteria, not inconsistent with provisions of this act, as are necessary and appropriate to conform to regulations for federal grants and loans for any of the purposes set forth in this act.

(j) Report by Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of loans authorized by this act. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of loans authorized and unallocated funds for the loan program as of the end of the preceding fiscal year;

(2) Identification of each loan agreement entered into by the State during the preceding fiscal year and the total amount of loans authorized by such loan agreements;

(3) The amount disbursed to each local government unit pursuant to such loan agreements during the preceding fiscal year and the total amount of such disbursements;

(4) The loan repayments made by each local government unit pursuant to such loan agreements and the total amount of such loan repayments during the preceding fiscal year; and

(5) A summary for the five preceding years of the information required by subdivisions (1) through (4) of this subsection.

The report shall be signed by the Secretary of Environment and Natural Resources.

(k) Local Government Commission.

(1) Local government units may execute debt instruments payable to the State in order to obtain loans provided for in this act. Local government units shall pledge or agree to apply as security for such obligations:

a. Any available source of revenues of the local government unit, including revenues from benefitted facilities or systems, provided that (i) the local government unit has not otherwise pledged the revenues as security for, or contractually agreed to apply the revenues to, the payment of any other obligations of the local government unit, (ii) the use of the revenues is not otherwise restricted by law, or (iii) the revenues are not derived from the exercise of the local government unit's taxing power; or

b. Their faith and credit; or

c. Any combination of a. or b. above.

The faith and credit of a local government unit shall not be pledged or be deemed to have been pledged unless the requirements of Article 4 of Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this act.

(2) Nothing contained in this act shall prohibit any local government unit from applying any funds of the local government unit not otherwise restricted as to use by law to the payment of any debt instrument payable to the State incurred pursuant to the provisions of this act.

(3) The Local Government Commission shall review and approve proposed loans to local government units under this act under the provisions of Articles 4 and 5 of Chapter 159 of the General Statutes. The Local Government Commission in considering the ability of a local government unit to repay a loan may regard as a source of revenue for repayment of a loan revenue sources that may not be available other than on an annual discretionary basis and that may not be subject to a pledge or agreement to apply. Loans under this act shall be outstanding debts for the purposes of Article 10 of Chapter 159 of the General Statutes.

(4) The State Treasurer shall annually certify to the General Assembly the financial condition of the loan program and identify existing delinquencies.

Section 11. Reports. (a) The Rural Economic Development Center shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Chair of the Board of Directors of the Rural Economic Development Center. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;

(2) Identification of each grant agreement entered into by the Rural Economic Development Center during the preceding fiscal year and the total amount of grants authorized by the grant agreements;

(3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and

(4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

(b) The Department of Environment and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Secretary of Environment and Natural Resources. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;

(2) Identification of each grant agreement entered into by the Department of Environment and Natural Resources during the preceding fiscal year and the total amount of grants authorized by the grant agreements;

(3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and

(4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

(c) The Department of Commerce shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Secretary of Commerce. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;

(2) Identification of each grant agreement entered into by the Department of Commerce during the preceding fiscal year and the total amount of grants authorized by the grant agreements;

(3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and

(4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

Section 12. Minority business participation. The goals set by G.S. 143-128 for participation in projects by minority businesses apply to projects funded by the proceeds of bonds or notes issued under this act. The Department of Environment and Natural Resources, the Department of Commerce, and the Rural Economic Development Center shall monitor compliance with this requirement and shall report to the General Assembly by January 1 of each year on the participation by minority businesses in these projects.

Section 13. Interpretation of act. (a) Additional Method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes or to specific acts are intended to be references to these sections, Chapters, or acts as they may be amended from time to time by the General Assembly.

(c) Broad Construction. This act, being necessary for the health and welfare of the people of the State, shall be broadly construed to effect the purposes thereof.

(d) Inconsistent Provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, or parts thereof, the provisions of this act shall be controlling.

(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 14. G.S. 159G-6 reads as rewritten:

"**§ 159G-6. Distribution of funds.**

(a) Revolving loans and grants.

(1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to local

government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.

(2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one local government unit during any fiscal year shall be ~~three~~ five million dollars ~~($3,000,000).~~ ($5,000,000). The maximum principal amount of grants made to any one local government unit during any fiscal year shall be ~~one~~ two million dollars ~~($1,000,000).~~ ($2,000,000).

(3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a local government unit to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the local government unit to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. -- The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the ~~county~~ local government unit in which the project is located. The projects which would require estimated average household water and sewer

user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in ~~subsection~~ subdivision (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. -- The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(c) Water Supply Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.

(1) General Water Supply Revolving Loan and Grant Account. -- The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.

(2) High-Unit Cost Water Supply Account. -- The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.

(3) Emergency Water Supply Revolving Loan Account. -- The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present or imminent in a community.

(d) Repealed by Session Laws 1991, c. 186, s. 4.

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder."

Section 15. The General Assembly finds that:

(1) The General Assembly has previously found that it is the policy of this State to facilitate the extension of natural gas facilities to unserved areas of the State; and

(2) The extension of natural gas facilities to unserved areas of the State is necessary for the health of the people and of the environment; and

(3) The extension of natural gas facilities to unserved areas of the State will aid and encourage the location of manufacturing enterprises and industrial facilities in those areas of the State, will encourage new construction, homes, and other businesses in those areas of the State, will increase the population, taxable property, agricultural industries, and business prospects in the State; and

(4) The 1989 General Assembly in Chapter 338 of the 1989 Session Laws directed the North Carolina Utilities Commission to require the franchised natural gas local distribution companies to file reports with the Commission detailing their plans for providing natural gas service in areas of the State where natural gas service is not available, and directed the Commission and the Public Staff to provide independent analyses and summaries of those reports together with status reports of natural gas service in the State to the Joint Legislative Utility Review Committee; and

(5) The reports of the utilities, the Commission, and the Public Staff indicate that the construction of facilities and the extension of natural gas service in some areas of the State may not be economically feasible with traditional funding methods; and

(6) The 1991 General Assembly enacted G.S. 62-158 and G.S. 62-2(9) authorizing special funding methods, including the use of supplier refunds and customer surcharges, to facilitate the expansion of natural gas service; and

(7) While the 1991 legislation has been successful in providing some natural gas service to previously unserved areas of the State, that legislation has not been sufficient to facilitate the extension of service that is necessary and in the public interest, and there are still counties with no gas service or virtually no gas service; and

(8) It is therefore necessary to authorize additional funding methods, including appropriations from the General Assembly and the proceeds of general obligation bonds, to further facilitate the expansion of natural gas service.

Section 16. Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-159. Additional funding for natural gas expansion.**

(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may provide funding through appropriations from the General Assembly or the proceeds of general obligation bonds as provided in this section to either (i) an existing natural gas local distribution company or (ii) a person or a gas district awarded a new franchise for the

construction of natural gas facilities that it otherwise would not be economically feasible for the company or person to construct.

(b) The use of funds provided under this section shall be pursuant to an order of the Commission after a public hearing. The Commission shall ensure that all projects for which funds are provided under this section are consistent with the intent of this section and G.S. 62-2(9). In determining whether to approve the use of funds for a particular project pursuant to this section, the Commission shall consider the scope of a proposed project, including the number of unserved counties and the number of anticipated customers that would be served, the total cost of the project, the extent to which the project is considered feasible, and other relevant factors affecting the public interest. In determining economic feasibility, the Commission shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company, person, or gas district to construct. In no event shall the Commission provide funding under this section of an amount greater than the negative net present value of any proposed project as determined by the Commission. If at any time a project is determined by the Commission to have become economically feasible, the Commission shall require the recipient of funding to remit to the Commission appropriate funds related to the project, and the Commission may order those funds to be returned with interest in a reasonable amount to be determined by the Commission. Funds returned, together with interest, shall be deposited with the State Treasurer to be used for other expansion projects pursuant to the provisions of this section. A utility plant acquired with expansion funds shall be included in the local distribution company's rate base at zero cost except to the extent such funds have been remitted by the company pursuant to order of the Commission. In the event a gas district wishes to sell or otherwise dispose of facilities financed with funds received under this section, it must first notify the Commission which shall determine the method of repayment or accounting for those funds.

(c) To the extent that one or more of the counties included in a proposed project to be funded pursuant to this section are counties affected by the loss of exclusive franchise rights provided for in G.S. 62-36A(b), the Commission may conclude that the public interest requires that the person obtaining the franchise or funding pursuant to this section be given an exclusive franchise and that the existing franchise be canceled. Any new exclusive franchise granted under this subsection shall be subject to the provisions of G.S. 62-36A(b). This subsection does not apply to gas districts formed under Article 28 of Chapter 160A of the General Statutes.

(d) The Commission, after hearing, shall adopt rules to implement this section as soon as practicable. The Commission and Public Staff shall report to the Joint Legislative Utility Review Committee on the use of funding provided under this section in conjunction with the reports required under G.S. 62-36A."

Section 17. G.S. 62-2 reads as rewritten:

"**§ 62-2. Declaration of policy.**

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest

and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

(1) To provide fair regulation of public utilities in the interest of the public;

(2) To promote the inherent advantage of regulated public utilities;

(3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;

(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;

(4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;

(5) To encourage and promote harmony between public utilities, their users and the environment;

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply; and

(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of ~~an~~ expansion ~~fund~~ funds for ~~each~~ natural gas local distribution ~~company~~ companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission.

(b) To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110, and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a finding that the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and

maintenance of reasonably affordable local exchange service and long distance service."

Section 18. Effective date. Section 14 of this act becomes effective only if the voters approve the issuance of the Clean Water Bonds authorized by this act in the election required by Section 7 of this act. The remaining sections of this act are effective when the act becomes law, and the Utilities Commission shall begin immediately the rule-making process mandated by G.S. 62-159(d), as enacted by Section 17 of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1492
Committee Substitute Favorable 6/17/98
Committee Substitute #2 Favorable 7/2/98

Short Title: Rural Infrastructure Bonds. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO ADDRESS STATEWIDE RURAL INFRASTRUCTURE NEEDS BY PROVIDING FUNDS (1) FOR GRANTS AND LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION AND WATER REUSE PROJECTS AND (2) FOR GRANTS, LOANS, OR OTHER FINANCING TO PUBLIC OR PRIVATE ENTITIES FOR CONSTRUCTION OF NATURAL GAS FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Rural Infrastructure Bond Act of 1998".

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

(a) Clean Water Bonds.

(1) $465,000,000 to provide State matching funds required to receive federal wastewater or water supply assistance funds and to provide additional funding for the Clean Water Revolving Loan and Grant Fund established in Chapter 159G of the General Statutes or to

provide funding by grants to local government units for wastewater treatment and water supply and distribution needs;

(2) $320,000,000 to provide loans to local government units to finance all or a portion of the cost of construction, improvements, enlargements, extensions, and reconstruction of water supply and distribution systems, wastewater collection systems, wastewater treatment works, water conservation projects, and water reuse projects.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity, the criteria established by Chapter 159G of the General Statutes, and the guidelines established by the United States Environmental Protection Agency Hardship Grants Program shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply and on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management.

(b) Natural Gas Bonds.

$215,000,000 to provide grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

Section 3. Definitions. As used in this act, unless the context otherwise requires:

(1) "Bond rating" means the numerical rating of a unit of local government developed by the NCMC. The rating formula is based on 100 being a theoretically "perfect" unit of local government and is an assessment of the creditworthiness of the unit. Units of local government with a rating below 75 or with no ratings have limited, if any, access to the private markets for financing water and sewer or other debt.

(2) "Bonds" means bonds issued under this act.

(3) "Capacity grant" means a grant awarded by the Rural Economic Development Center to a local government unit to pay all or a portion of the cost associated with the planning and writing of a grant or loan application, a capital improvement plan, or other efforts that support growth and development of rural areas.

(4) "Capital improvement plan" means a report that identifies water and sewer infrastructure and capital needs that address planned and strategic growth. It shall include an assessment of current

water and wastewater systems and a projection of those infrastructure needs over a 20-year horizon. The report shall take into consideration government mandates, usefulness of the improvements to the community and the effect on both short and long-term operation and maintenance of the scheduled improvements and identifies alternatives for meeting the identified need including regionalization, consolidation and system mergers, water reuse and conservation.

(5) "Clean Water Revolving Loan and Grant Act" means Chapter 796 of the 1987 Session Laws, as amended from time to time, codified as Chapter 159G of the General Statutes.

(6) "Clean Water Revolving Loan and Grant Fund" means the Clean Water Revolving Loan and Grant Fund as defined in the Clean Water Revolving Loan and Grant Act.

(7) "Cost" means, without intending thereby to limit or restrict any proper definition of this term in financing the cost of facilities or purposes authorized by this act:

a. The cost of constructing, reconstructing, enlarging, acquiring, and improving facilities, and acquiring equipment and land therefor,

b. The cost of engineering, architectural, and other consulting services as may be required,

c. Administrative expenses and charges,

d. Finance charges and interest prior to and during construction and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction,

e. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs of bond and note issuance, to the extent and as determined by the State Treasurer,

f. The cost of reimbursing the State for any payments made for any cost described above, and

g. Any other costs and expenses necessary or incidental to the purposes of this act.

Allocations in this act of proceeds of bonds to the costs of a project or undertaking in each case may include allocations to pay the costs set forth in items c., d., e., f., and g. in connection with the issuance of bonds for the project or undertaking.

(8) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company, or other insurance

institution, a corporation, investment banking firm, or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.

(9) "Economically depressed area" means any of the following:

a. An economically distressed county as defined in G.S. 143B-437.01.

b. That part of a rural county whose poverty rate is at least one hundred fifty percent (150%) of the State poverty rate. For the purpose of this section, the poverty rate is the percentage of the population with income below the latest annual federal poverty guidelines issued by the United States Department of Health and Human Resources.

c. That part of a rural county that experiences an actual or imminent loss of manufacturing jobs in a number that is equal to or exceeds five percent (5%) of the total number of manufacturing jobs in the part.

(10) "Local government units" means local government units as defined in the Clean Water Revolving Loan and Grant Act.

(11) "NCMC" means the North Carolina Municipal Council, Inc., a nonprofit North Carolina corporation which provides bond ratings, or any successor thereto. In the event such corporation dissolves or no longer performs the functions contemplated herein, such term shall mean that comparable corporation designated by the State Treasurer.

(12) "Notes" means notes issued under this act.

(13) "Par formula" means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:

a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible,

b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or

c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

(14) "Rural county" means a county with a density of fewer than 200 people per square mile based on the United States census.

(15) "Rural Economic Development Center" means the Rural Economic Development Center, Inc., a nonprofit North Carolina corporation, or any successor thereto. In the event such corporation dissolves or no longer performs the functions contemplated herein, such term shall mean that comparable corporation designated by the Governor.

(16) "State" means the State of North Carolina.

(17) "Supplemental grant" means a grant awarded by the Rural Economic Development Center to a local government unit to assist in financing wastewater collection systems, wastewater treatment works, water conservation projects, water reuse projects, or water supply systems. Supplemental grant funds shall supplement other funding and shall not represent more than fifty percent (50%) of the total costs of the wastewater collection systems, wastewater treatment works, water conservation projects, water reuse projects, or water supply systems financed.

(18) "Unsewered communities" means those communities lacking centralized, publicly owned wastewater treatment collection systems and wastewater treatment works.

(19) "Wastewater collection systems" means wastewater collection systems as defined in the Clean Water Revolving Loan and Grant Act.

(20) "Wastewater treatment works" means wastewater treatment works as defined in the Clean Water Revolving Loan and Grant Act.

(21) "Water conservation projects" include, but are not limited to, any construction, repair, renovation, expansion, replacement of components, or other capital improvement, including related equipment and land acquisition, designed to:

a. Eliminate the wasteful or unnecessary use or loss of water in the operations of a wastewater collection system, wastewater treatment works, or water supply system; or

b. Enhance the operation of a wastewater collection system, wastewater treatment works, or water supply system to provide a more efficient use of water.

(22) "Water Pollution Control Revolving Fund" means the fund described by G.S. 159G-4(a) and G.S. 159G-5(c).

(23) "Water reuse" means the actual use or application of treated wastewater in or on areas which require water but do not require potable water quality.

(24) "Water supply systems" means water supply systems as defined in the Clean Water Revolving Loan and Grant Act.

Section 4. Authorization of bonds and notes. (a) Clean Water Bonds. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Clean Water Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Clean Water Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding seven hundred eighty-five million dollars ($785,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

(b) Natural Gas Bonds. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Natural Gas Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Natural Gas Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding two hundred fifteen million dollars ($215,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

Section 5. Uses of bond and note proceeds. (a) Clean Water Bonds. The proceeds of Clean Water Bonds and notes shall be used for the purpose of making loans and grants to local governments as follows:

(1) The proceeds of three hundred fifty-five million dollars ($355,000,000) of Clean Water Bonds shall be used by the Department of Environment and Natural Resources to provide State matching funds required to receive federal wastewater or water supply assistance funds, for grants to local government units for the same purposes for which funds in the Clean Water Revolving Loan and Grant Fund may be used, and for grants to fund hardship projects in accordance with the guidelines established by the United States Environmental Protection Agency Hardship Grants Program. The grants shall be made for the purpose of paying the cost of water supply systems, wastewater collection systems, and wastewater treatment works, water conservation projects, and water reuse projects.

Of the proceeds of the three hundred fifty-five million dollars ($355,000,000) referred to in this Section 5(a)(1) above, the sum of

three hundred million dollars ($300,000,000) shall be allocated as follows:

a. High-Unit Cost Wastewater Account
   1. Reserved for grants to local government units whose bond rating is less than 75 or who have no bond rating $70,000,000
   2. Reserved for grants to local government units whose bond rating is 75 or greater..... $80,000,000

b. High-Unit Cost Water Supply Account
   1. Reserved for grants to local government units whose bond rating is less than 75 or who have no bond rating $70,000,000
   2. Reserved for grants to local government units whose bond rating is 75 or greater $80,000,000

The proceeds may be (i) transferred directly to the Clean Water Revolving Loan and Grant Fund to make grants, (ii) used to make grants directly to the appropriate local government qualifying for a grant from the Clean Water Revolving Loan and Grant Fund, (iii) used for any combination of (i) and (ii), or (iv) used in such other manner as shall effectuate the clean water purposes of this act.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity, the criteria established by Chapter 159G of the General Statutes, and the guidelines established by the United States Environmental Protection Agency Hardship Grants Program shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply and on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management, and on having a capital improvement plan.

Of the proceeds of the three hundred fifty-five million dollars ($355,000,000) referred to in this Section 5(a)(1) above, the sum of thirty-five million dollars ($35,000,000) shall be used to provide State funds necessary for the 1999-2000, 2000-2001, 2001-2002, 2002-2003, and 2003-2004 fiscal years to match the federal wastewater or water supply assistance funds deposited in the Water Pollution Control Revolving Fund or another fund that is used to pay the cost of water supply systems, wastewater collection systems, or wastewater treatment works and is eligible to receive federal

matching funds, unless the General Assembly has provided the required match through other sources, in which event this priority shall cease to exist to the extent of the availability of the other sources. The Department of Environment and Natural Resources shall certify to the State Treasurer the amount of funds required for the State match for each of the fiscal years ending June 30, 1999, June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, and June 30, 2004, and the extent to which the General Assembly has provided other funds for this purpose. Upon certification each year of the amount of funds required for the State match for that fiscal year, the State Treasurer may issue from the thirty-five million dollars ($35,000,000) the amount certified up to thirty-five million dollars ($35,000,000). Upon certification for the State match required for the fiscal year ending June 30, 2004, the State Treasurer may issue the remaining balance of the thirty-five million dollars ($35,000,000) of the Clean Water Bonds authorized by this subdivision for the purpose of funding the State match for that fiscal year and for any other purposes authorized by this subdivision. The proceeds of the bonds necessary for the State match for each fiscal year shall be deposited in the Water Pollution Control Revolving Fund or another appropriate fund or account determined by the State Treasurer.

Of the proceeds of the three hundred fifty-five million dollars ($355,000,000) referred to in this Section 5(a)(1) above, the sum of twenty million dollars ($20,000,000) shall be used to provide hardship grants to eligible local government units to assist with wastewater treatment works and wastewater collection systems. Such grants shall be awarded and administered by the Department of Environment and Natural Resources in accordance with the guidelines established by the United States Environmental Protection Agency Hardship Grants Program.

Although public necessity, the criteria established by Chapter 159G of the General Statutes, and the guidelines established by the United States Environmental Protection Agency Hardship Grants Program shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply and on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management, and on having a capital improvement plan.

(2) The proceeds of sixty million dollars ($60,000,000) of Clean Water Bonds shall be used for the purpose of making grants to local government units to pay the cost of clean water projects in

connection with the location of industry to, and expansion of industry in, the State. These grants shall be awarded and administered by the Department of Commerce. These funds shall be applied to pay the costs of grants awarded in the same manner as funds in the Industrial Development Fund created in G.S. 143B-437.01(a), for use in accordance with G.S. 143B-437.01(a), subject to the further limitations on the provisions of G.S. 143B-437.01(a) set forth below, and shall be applied to pay the costs of grants awarded in the same manner as funds in the Utility Account of the Industrial Development Fund created in G.S. 143B-437.01(b1), for use in accordance with G.S. 143B-437.01(b1), subject to the further limitations on the provisions of G.S. 143B-437.01(b1) set forth below. In applying the provisions of G.S. 143B-437.01(a) or G.S. 143B-437.01(b1), as the case may be, the following exceptions shall apply:

a. The funds shall be used only for grants to local governments, not for loans.

b. Grants shall be awarded only to projects the Secretary of Commerce finds will have a favorable impact on the clean water objectives of the State.

c. The only purposes for which grants may be made are construction of or improvements to new or existing water or sewer distribution lines or equipment, construction of or improvements to new or existing wastewater treatment works, or improvements that will expand the capacity of existing wastewater treatment works or water supply systems.

d. The projects may be located only in counties that are economically distressed as defined in G.S. 143B-437.01 or have a population of less than 50,000.

e. Grants may be made with respect to the following industries as defined in G.S. 105-129.2: manufacturing and processing, and warehousing and wholesale trades.

f. No match is required for the grants.

g. The provisions of G.S. 143B-437.01(a) or G.S. 143B-437.01(b1), as the case may be, that limit the expenditure of funds to costs of utility lines or facilities located on the site of the new or proposed industrial building or that are directly related to the operation of the specific industrial activity at the building, shall not apply if the utility lines or facilities being provided will further the clean water objectives of the State.

The General Assembly finds that the purpose of providing water and sewer distribution lines and wastewater treatment works

in economically distressed counties is to provide clean water in North Carolina in several different ways. First, these projects will reduce industrial reliance on wells, septic tanks, and other similar facilities. Second, when a distribution line is extended to an industrial facility in an area not otherwise served by water and sewer infrastructure, residents, other businesses, and local governments can hook into the distribution line, bringing clean water, wastewater treatment, or both to the unserved area. Also, the installation and expansion of water supply and wastewater treatment facilities to provide water supply and wastewater treatment in connection with new or expanding industry will result in additional water supply and treatment facilities available to the residents, other businesses, and local governments in the area where the installation or expansion occurs.

The proceeds of the Clean Water Bonds, issued for the purpose described in this Section 5(a)(2), shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of the cost for the purpose for which the grant is made. The Department of Commerce shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made.

(3) The proceeds of fifty million dollars ($50,000,000) of Clean Water Bonds shall be used to provide supplemental and capacity grants to eligible local government units to match federal, State, and other grant or loan program funds to plan or improve needed water and sewer projects in economically depressed areas of North Carolina. Such grants shall be awarded and administered by the Rural Economic Development Center. Those proceeds shall be allocated as follows:

a. Supplemental Grants $40,000,000
b. Capacity Grants $10,000,000

The Rural Economic Development Center shall certify to the State Treasurer the amount of funds required, not to exceed eight million dollars ($8,000,000) for supplemental grants, not to exceed two million dollars ($2,000,000) for capacity grants, and not to exceed a total of ten million dollars ($10,000,000) in supplemental and capacity grants, for each of the fiscal years ending June 30, 1999, June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, and June 30, 2004. Upon certification each year of the amount of funds required for that fiscal year, the State Treasurer may issue the amount certified up to ten million dollars ($10,000,000). Upon certification for the fiscal year ending June 30, 2004, the State Treasurer may issue the remaining balance of the fifty million dollars ($50,000,000) of the Clean Water Bonds

authorized by this subdivision for any other purposes authorized by this subdivision.

Grants made from the proceeds of this fifty million dollars ($50,000,000) for supplemental grants shall be based on the following criteria:

a. The applicant shall be a local government unit.

b. The applicant shall be a rural county or a local government unit located in a rural county.

c. First priority shall be given to a water supply system, wastewater collection system, or wastewater treatment work that creates or retains jobs. A water supply system, wastewater collection system, or wastewater treatment work shall also receive funding priority if the project is located in an economically distressed county as defined by G.S. 143B-437.01.

d. A water supply system, wastewater collection system, or wastewater treatment work that is proposed in a nondistressed county must meet at least one of the following criteria: (i) be located in that part of a rural nondistressed county where the poverty rate is at least one hundred fifty percent (150%) of the State poverty rate, (ii) be located in that part of a rural nondistressed county where the unemployment rate is at least double the State unemployment rate for the most recent reporting period available, or (iii) be located in that part of a rural nondistressed county that experiences an actual or imminent loss of jobs in a number that equals or exceeds five percent (5%) of the total number of jobs in that part of the county. Any grant awarded for a water supply system, wastewater collection system, or wastewater treatment work in a nondistressed county shall be matched on a dollar-for-dollar basis in the amount of the grant awarded.

Although public necessity and the criteria listed above shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply and on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management, and on having a capital improvement plan. However, funds shall not be expended for the repair or replacement of low-pressure pipe wastewater systems.

The Rural Economic Development Center shall award grants to units of local government for the purposes authorized by this Section 5(a)(2) in accordance with the criteria set forth above. When the Rural Economic Development Center authorizes a grant, the Rural Economic Development Center shall notify the State Treasurer of the authorization and shall submit to the State Treasurer the grant application and records relevant to the grant's authorization. The State Treasurer shall review the grant and relevant documents to verify that the grant complies with the requirements of this act. The State Treasurer shall complete the review no later than 30 days after the receipt of the grant application and relevant records from the Rural Economic Development Center, and shall notify the Rural Economic Development Center that the review has been completed and of the State Treasurer's findings.

The proceeds of the Clean Water Bonds issued for the purpose described in this section shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of costs for the purposes for which the grant is made. The Rural Economic Development Center shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made and shall furnish such records to the State Treasurer at the time a request for payment to or on behalf of a grantee is to be made.

At the end of each fiscal year, the Rural Economic Development Center shall provide to the State Treasurer any records that document the timing and purposes of the expenditures by the grantee units of local government of the proceeds of the grants funded from the proceeds of the Clean Water Bonds during that fiscal year that have not already been provided to the State Treasurer.

(4) The proceeds of three hundred twenty million dollars ($320,000,000) of Clean Water Bonds shall be used for the purpose of making loans to local government units to pay the cost of water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works. The proceeds shall be allocated as follows:

a. Wastewater collection systems and wastewater treatment works.

1. Reserved for loans to local government units whose bond rating is less than 75 or who have no bond rating $10,000,000

2. Reserved for loans to local government units whose bond rating is 75 or more.....$150,000,000

b. Water supply and distribution systems and water conservation projects.

1. Reserved for loans to local government units whose bond rating is less than 75 or who have no bond rating.....$10,000,000

2. Reserved for loans to local government units whose bond rating is 75 or more.....$150,000,000

The proceeds shall be used to make loans directly to local government units qualifying for a loan from the Clean Water Revolving Loan and Grant Fund or loaned in such other manner as shall effectuate the purposes of this act. To qualify for a loan for the purpose of paying the cost of water supply systems, a local government unit must have a water supply facility plan approved by the Department of Environment and Natural Resources. A water supply facility plan submitted by a local government unit to the Department under G.S. 143-355(l) will be sufficient to meet this requirement. To qualify for a loan for the purpose of paying the cost of wastewater collection systems or wastewater treatment works, a local government unit must have a wastewater facility plan approved by the Department of Environment and Natural Resources. A wastewater facility plan must project future wastewater treatment needs, must present a long-range plan to meet those needs, and must include plans for system operations and maintenance of the facilities being built with the bond proceeds. In addition, great emphasis shall also be placed on having a capital improvement plan.

The Department of Environment and Natural Resources shall set the priorities and determine the eligibility of local government units for these loans in accordance with Section 10 of this act. The form of the loans and the details thereof including, without limitation, the maturity, interest rate, and amortization schedule shall be determined, from time to time, by the State Treasurer. In making these determinations, the State Treasurer shall consider the purpose of the loans, the ability of local government units to repay the loans, and the security for the loans. The interest rates on these loans shall reflect the self-supporting nature of the loan program and shall be sufficient to cover substantially all payments of debt service on the three hundred twenty million dollars ($320,000,000) of Clean Water Bonds and the issuance costs and administrative expenses associated with the issuance of these bonds and the making of these loans, subject to any applicable requirements of the federal tax law.

Repayments of the loans shall be credited to the General Fund and may be used to pay, directly or indirectly, debt service on the bonds and notes issued. Repayments may be initially placed into such fund or account as may be determined by the State Treasurer for the purpose of determining compliance with applicable requirements of the federal tax law and shall be expended and disbursed therefrom under the direction and supervision of the Director of the Budget.

(6) If bond proceeds remain unspent, five years from the date on which the bonds were issued, then the General Assembly may at any session after that five-year period of time increase or decrease the allocations of the proceeds of the Clean Water Bonds set forth in (1), (2), (3), (4), and (5) above, so long as the aggregate amount of the allocations does not exceed seven hundred eighty-five million dollars ($785,000,000).

(b) Natural Gas Bonds. The proceeds of Natural Gas Bonds and notes shall be used for the purpose of providing grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for the costs of constructing natural gas facilities, including pipelines, compressors, interests in real property, and related equipment for the delivery of natural gas in order to facilitate the expansion of natural gas facilities to unserved areas of the State in accordance with the findings of the General Assembly described in Section 15 of this act.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any natural gas grants authorized by this act may be placed by the State Treasurer in the Natural Gas Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Natural Gas Bonds Fund or any separate natural gas fund or account established under this act may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment earnings with respect to grant money to the extent otherwise directed or restricted by the terms of the grant, may be (i) credited to the Natural Gas Bonds Fund or any separate natural gas fund or account established under this act; (ii) used to pay debt service on the Natural Gas Bonds authorized by this act; (iii) used to satisfy compliance with applicable requirements of the federal tax law; or (iv) transferred to the General Fund of the State.

The proceeds of Natural Gas Bonds and notes may be used with any other moneys made available by the General Assembly for providing grants, loans, or other financing in accordance with this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at

the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of Natural Gas Bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act for construction of natural gas facilities shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

The North Carolina Utilities Commission shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division on the expenditure of moneys from the Natural Gas Bonds Fund.

Section 6. Allocation of proceeds. (a) Clean Water Bonds. The proceeds of Clean Water Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Clean Water Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer and shall be disbursed as provided in this act. Moneys in the Clean Water Bonds Fund shall be allocated and expended as provided in this act.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source for deposit to the Clean Water Bonds Fund may be placed in the Clean Water Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Clean Water Bonds Fund or any separate clean water fund or account established under this act may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment earnings with respect to grant moneys to the extent otherwise directed or restricted by the terms of the grant, may be (i) credited to the Clean Water Bonds Fund or any separate clean water fund or account established under this act, (ii) used to pay debt service on the bonds authorized by this act, (iii) used to satisfy compliance with applicable requirements of the federal tax law, or (iv) transferred to the General Fund of the State.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for making grants and loans authorized by this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision

of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

(b) Natural Gas Bonds. The proceeds of Natural Gas Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Natural Gas Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer, and shall be disbursed as provided in this act. Moneys in the Natural Gas Bonds Fund shall be allocated and expended as provided in this act. The proceeds may be used in accordance with G.S. 62-159 or may be distributed in accordance with the provisions of legislation enacted by the General Assembly in 1998 or later providing for the allocation of the bond proceeds for the purposes provided in this act.

(c) Costs. Allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in Section 3(6)c., d., e., f., and g. of this act in connection with the issuance of bonds for that capital improvement or undertaking.

Section 7. Election. The questions of the issuance of the bonds authorized by this act shall be submitted to the qualified voters of the State at an election to be held on the first Tuesday after the first Monday of November 1998. Any other primary, election, or referendum validly called or scheduled by law at the time the election on the bond question provided for in this section is held may be held as called or scheduled. Notice of the election shall be given in the manner and at the times required by G.S. 163-33(8). The election and the registration of voters therefor shall be held under and in accordance with the general laws of the State. Absentee ballots shall be authorized in the election.

The State Board of Elections shall reimburse the counties of the State for all necessary expenses incurred in holding the election that are in addition to those that would have otherwise been incurred, the same to be paid out of the Contingency and Emergency Fund or other funds available to the State Board of Elections.

Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The bond questions to be used in the ballots or voting systems shall be in substantially the following form:

"[ ] FOR [ ] AGAINST

the issuance of seven hundred eighty-five million dollars ($785,000,000) State of North Carolina Clean Water Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to make loans and grants to local government units to pay all or a portion of the cost of clean water projects."

"[ ] FOR [ ] AGAINST

the issuance of two hundred fifteen million dollars ($215,000,000) State of North Carolina Natural Gas Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to provide grants, loans, or other financing to public or private entities for construction of natural gas facilities in order to facilitate the expansion of natural gas facilities to unserved portions of the State."

If a majority of those voting on a bond question in the election vote in favor of the issuance of the bonds described in the question, those bonds may be issued as provided in this act. If a majority of those voting on a bond question in the election vote against the issuance of the bonds described in the question, those bonds shall not be issued.

The results of the election shall be canvassed and declared as provided by law for elections for State officers; the results of the election shall be certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Section 8. Issuance of bonds and notes. (a) Terms and Conditions. Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery, and bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have

been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as well as under this act.

(c) Manner of Sale; Expenses. Subject to determination by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate or rates of interest, which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or the notes, as the State Treasurer may determine. All expenses incurred in preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Notes; Repayment.

(1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

a. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;

b. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;

c. For the renewal of any loan evidenced by notes herein authorized;

d. For the purposes authorized in this act; and

e. For refunding bonds or notes as herein authorized.

(2) Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.

(e) Refunding Bonds and Notes. By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding bonds or notes issued pursuant to this act. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured.

(f) Tax Exemption. Bonds and notes shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes shall not be subject to taxation as to income.

(g) Investment Eligibility. Bonds and notes are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) Faith and Credit. The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. In addition to the State's right to amend any provision of this act to the extent it does not impair any contractual right of a bond owner, the State expressly reserves the right to amend any provision of this act with respect to the making and repayment of loans, the disposition of any repayments of loans, and any intercept provisions relating to the failure of a local government unit to repay a loan, the bonds not being secured in any respect by loans, any repayments thereof, or any intercept provisions with respect thereto.

Section 9. Variable interest rates. In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially or adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;

(2) Be additionally supported by a credit facility;

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Section 10. Special provisions governing clean water loans. (a) Scope. The provisions of this section shall apply to loans being made from the proceeds of bonds authorized by this act for clean water projects, other than from funds deposited in the Clean Water Revolving Loan and Grant Fund.

(b) Clean Water Bonds Loan Account. There is established in the Department of State Treasurer a special account to be known as the Clean Water Bonds Loan Account, which may include any special or segregated accounts the State Treasurer considers appropriate. There shall be deposited in the Clean Water Bonds Loan Account proceeds of the Clean Water Bonds and notes to be used to make loans, other than loans to be made through the Clean Water Revolving Loan and Grant Fund, to local government units for clean water projects as provided in this act.

Except as otherwise permitted by Section 5 of this act with respect to the use of investment earnings, all moneys accruing to the credit of the Clean Water Bonds Loan Account other than funds set aside for administrative expenses, including expenses related to determining compliance with applicable requirements of the federal tax law and costs of issuance, shall be used to make loans for the purposes provided in this act. The State Treasurer shall be responsible for making and administering all loans pursuant to the provisions of this section.

(c) Application for Loans; Hearings.

(1) Eligibility/Initial Hearing.

a. Prior to filing an application for a loan, a local government unit shall hold a public hearing. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

b. All applications for loans shall be filed with the Department of Environment and Natural Resources. The form of the

application shall be prescribed by the Department and shall require any information necessary to determine the eligibility for a loan under the provisions of this section. All applications approved by the Department of Environment and Natural Resources shall be filed with the Local Government Commission. Each applicant shall furnish to the Department of Environment and Natural Resources and the Local Government Commission information in addition or supplemental to the information contained in its application, upon request.

c. A local government unit shall not be eligible for a loan unless it demonstrates to the satisfaction of the Department of Environment and Natural Resources and the Local Government Commission that:

1. The applicant is a local government unit;
2. The applicant has the financial capacity to pay the principal of and interest on its proposed loan as evidenced by the approval of the Local Government Commission;
3. The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations, and ordinances, whether federal, State, or local; and
4. The applicant has agreed by official resolution to adopt and place into effect a schedule of fees and charges or the application of other sources of revenue which will provide adequate funds for proper operation, maintenance, and administration of the project and repayment of all principal and interest on the loan.

(2) Assessment. The Department of Environment and Natural Resources may require any applicant to file with its application an assessment of the impact the project for which the funds are sought will have upon meeting the facility needs of the area within which the project is to be located.

(3) Hearing by the Department of Environment and Natural Resources or the Local Government Commission. A public hearing may be held by the Department of Environment and Natural Resources or the Local Government Commission at any time on any application. Public hearings may also be held by the Department of Environment and Natural Resources in its discretion upon written request from any citizen or taxpayer who is a resident of the county or counties in which the project is to be located or a resident of the local government unit that proposes to borrow

moneys under this act, if it appears that the public interest will be served by the hearing. The written request shall set forth each objection to the proposed project or other reason for requesting a hearing on the application and shall contain the name and address of the persons submitting it. In deciding whether to grant a request for a hearing on an application, the Department of Environment and Natural Resources may consider the application, the written objections to the proposed project, and the facility needs and shall determine if the public interest will be served by a hearing. The determination by the Department of Environment and Natural Resources shall be conclusive, and all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application.

(4) Petition for Vote. A petition, demanding that the question of whether to enter into a loan agreement with the State under this act be submitted to voters, may be filed with the clerk of the local government unit applying for the loan within 15 days after the public hearing required by this section. The petition's sufficiency shall be determined and a referendum, if any, shall be conducted according to the standards, procedures, and limitations set out in G.S. 159-60 through G.S. 159-62.

(d) Priorities.

(1) Determination. Determination of priorities to be assigned each eligible project shall be made semiannually by the Department of Environment and Natural Resources during each fiscal year. Every eligible project shall be considered by the Department of Environment and Natural Resources with every other project eligible during this same priority period.

(2) Priority Factors. All applications for loans under this act shall be assigned a priority by the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall establish other priority factors criteria by rule.

(3) Assignment of Priority. A written statement relative to each priority assigned shall be prepared by the Department of Environment and Natural Resources and shall be attached to the application. The priority assigned shall be conclusive.

(4) Failure to Qualify. If an application does not qualify for a loan as of the prior period in which the application was eligible for consideration by reason of the priority assigned, the application shall be considered during the next succeeding priority period upon request of the applicant. If the application again fails to qualify for a loan during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time

and may amend any pending application to include additional data or information.

(5) Withdrawal of Commitment. Failure of an applicant within one year after the date of acceptance of the loan to arrange for necessary financing of the proposed project or award of the contract of the construction of the proposed project shall constitute sufficient cause for withdrawal of the commitment. Prior to withdrawal of a commitment, the Department of Environment and Natural Resources shall give due consideration to any extenuating circumstances presented by the applicant as reasons for failure to arrange necessary financing or to award a contract, and the commitment may be extended for an additional period of time if, in the judgment of the Department of Environment and Natural Resources, the extension is justified.

(e) Disbursement. To be eligible to receive the loans provided for in this section, a local government unit must arrange to borrow the amounts necessary pursuant to rules adopted by the Local Government Commission. No funds shall be disbursed until the Department of Environment and Natural Resources gives a certificate of eligibility to the effect that the applicant meets all eligibility criteria and that all procedural requirements of this act have been met. The maximum principal amount of a loan shall be one hundred percent (100%) of the cost of any eligible project.

(f) Intercept. The governing body of a local government unit shall by resolution authorize to be included in its loan agreement a provision authorizing the State Treasurer, upon failure of the local government unit to make a scheduled repayment of the loan, to withhold from the local government unit any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan. In such event, notwithstanding any other provision of law, the State Treasurer is authorized to withhold and apply such funds to the repayment of the loan, except that such funds shall not be withheld if (i) before the execution of the loan agreement, such funds have been legally pledged to secure special obligation bonds or other obligations of the local government unit, or (ii) after the execution of the loan agreement, such funds are legally pledged to secure special obligation bonds or other obligations of the local government unit as authorized in this subsection. After the execution of a loan agreement, all or any portion of the State funds specified in the loan agreement to be so withheld may be pledged to secure special obligation bonds or other obligations of the local government unit only with the prior written consent of the State Treasurer.

The State Treasurer shall notify the Secretary of Revenue and the State Controller of the amount to be withheld from the local government unit, and the Secretary of Revenue and the State Controller shall transfer to the State Treasurer the amount so requested to be applied by the State Treasurer to the repayment of the loan.

(g) Inspection. Inspection of a project for which a loan has been made under this act may be performed by qualified personnel of the Department of Environment and Natural Resources or may be performed by qualified engineers registered in this State approved by the Department of Environment and Natural Resources. No person shall be approved to perform inspections who is an officer employed by the local government unit to which the loan was made or who is an owner, officer, employer, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan was made. For the purpose of payment of inspection fees, inspection services shall be included in the term "cost" as used in this act.

(h) Rules. The State Treasurer, the Local Government Commission, and the Department of Environment and Natural Resources may adopt, modify, and repeal rules necessary for the administration of their respective duties under this act. Uniform rules may be jointly adopted where feasible and desirable, and no rule, jointly adopted, may be modified or revoked except upon concurrence of all agencies involved.

(i) Federal Grants and Loans. In order to carry out the purposes of this act to secure the greatest possible benefits to the citizens of this State of the funds appropriated, the State Treasurer, the Local Government Commission, and the Department of Environment and Natural Resources shall adopt rules and criteria, not inconsistent with provisions of this act, as are necessary and appropriate to conform to regulations for federal grants and loans for any of the purposes set forth in this act.

(j) Report by Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of loans authorized by this act. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of loans authorized and unallocated funds for the loan program as of the end of the preceding fiscal year;

(2) Identification of each loan agreement entered into by the State during the preceding fiscal year and the total amount of loans authorized by such loan agreements;

(3) The amount disbursed to each local government unit pursuant to such loan agreements during the preceding fiscal year and the total amount of such disbursements;

(4) The loan repayments made by each local government unit pursuant to such loan agreements and the total amount of such loan repayments during the preceding fiscal year; and

(5) A summary for the five preceding years of the information required by subdivisions (1) through (4) of this subsection.

The report shall be signed by the Secretary of Environment and Natural Resources.

(k) Local Government Commission.

(1) Local government units may execute debt instruments payable to the State in order to obtain loans provided for in this act. Local government units shall pledge or agree to apply as security for such obligations:

a. Any available source of revenues of the local government unit, including revenues from benefitted facilities or systems, provided that (i) the local government unit has not otherwise pledged the revenues as security for, or contractually agreed to apply the revenues to, the payment of any other obligations of the local government unit, (ii) the use of the revenues is not otherwise restricted by law, or (iii) the revenues are not derived from the exercise of the local government unit's taxing power; or

b. Their faith and credit; or

c. Any combination of a. or b. above.

The faith and credit of a local government unit shall not be pledged or be deemed to have been pledged unless the requirements of Article 4 of Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this act.

(2) Nothing contained in this act shall prohibit any local government unit from applying any funds of the local government unit not otherwise restricted as to use by law to the payment of any debt instrument payable to the State incurred pursuant to the provisions of this act.

(3) The Local Government Commission shall review and approve proposed loans to local government units under this act under the provisions of Articles 4 and 5 of Chapter 159 of the General Statutes. The Local Government Commission in considering the ability of a local government unit to repay a loan may regard as a source of revenue for repayment of a loan revenue sources that may not be available other than on an annual discretionary basis and that may not be subject to a pledge or agreement to apply. Loans under this act shall be outstanding debts for the purposes of Article 10 of Chapter 159 of the General Statutes.

(4) The State Treasurer shall annually certify to the General Assembly the financial condition of the loan program and identify existing delinquencies.

Section 11. Reports. (a) The Rural Economic Development Center shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Chair of the Board of

Directors of the Rural Economic Development Center. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;

(2) Identification of each grant agreement entered into by the Rural Economic Development Center during the preceding fiscal year and the total amount of grants authorized by the grant agreements;

(3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and

(4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

(b) The Department of Environment and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Secretary of Environment and Natural Resources. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;

(2) Identification of each grant agreement entered into by the Department of Environment and Natural Resources during the preceding fiscal year and the total amount of grants authorized by the grant agreements;

(3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and

(4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

(c) The Department of Commerce shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Secretary of Commerce. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;

(2) Identification of each grant agreement entered into by the Department of Commerce during the preceding fiscal year and the total amount of grants authorized by the grant agreements;

(3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and

(4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

Section 12. Minority business participation. The goals set by G.S. 143-128 for participation in projects by minority businesses apply to projects funded by the proceeds of bonds or notes issued under this act. The Department of Environment and Natural Resources, the Department of Commerce, and the Rural Economic Development Center shall monitor compliance with this requirement and shall report to the General Assembly by January 1 of each year on the participation by minority businesses in these projects.

Section 13. Interpretation of act. (a) Additional Method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes or to specific acts are intended to be references to these sections, Chapters, or acts as they may be amended from time to time by the General Assembly.

(c) Broad Construction. This act, being necessary for the health and welfare of the people of the State, shall be broadly construed to effect the purposes thereof.

(d) Inconsistent Provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, or parts thereof, the provisions of this act shall be controlling.

(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 14. G.S. 159G-6 reads as rewritten:

"**§ 159G-6. Distribution of funds.**

(a) Revolving loans and grants.

(1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to local government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.

(2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal

amount of revolving loans made to any one local government unit during any fiscal year shall be ~~three~~ five million dollars ~~($3,000,000).~~ ($5,000,000). The maximum principal amount of grants made to any one local government unit during any fiscal year shall be ~~one~~ two million dollars ~~($1,000,000).~~ ($2,000,000).

(3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a local government unit to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the local government unit to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. -- The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the ~~county~~ local government unit in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in ~~subsection~~ subdivision (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. -- The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(c) Water Supply Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.

(1) General Water Supply Revolving Loan and Grant Account. -- The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.

(2) High-Unit Cost Water Supply Account. -- The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.

(3) Emergency Water Supply Revolving Loan Account. -- The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present or imminent in a community.

(d) Repealed by Session Laws 1991, c. 186, s. 4.

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder."

Section 15. The General Assembly finds that:

(1) The General Assembly has previously found that it is the policy of this State to facilitate the extension of natural gas facilities to unserved areas of the State; and

(2) The extension of natural gas facilities to unserved areas of the State is necessary for the health of the people and of the environment; and

(3) The extension of natural gas facilities to unserved areas of the State will aid and encourage the location of manufacturing enterprises and industrial facilities in those areas of the State, will encourage new construction, homes, and other businesses in those

areas of the State, will increase the population, taxable property, agricultural industries, and business prospects in the State; and

(4) The 1989 General Assembly in Chapter 338 of the 1989 Session Laws directed the North Carolina Utilities Commission to require the franchised natural gas local distribution companies to file reports with the Commission detailing their plans for providing natural gas service in areas of the State where natural gas service is not available, and directed the Commission and the Public Staff to provide independent analyses and summaries of those reports together with status reports of natural gas service in the State to the Joint Legislative Utility Review Committee; and

(5) The reports of the utilities, the Commission, and the Public Staff indicate that the construction of facilities and the extension of natural gas service in some areas of the State may not be economically feasible with traditional funding methods; and

(6) The 1991 General Assembly enacted G.S. 62-158 and G.S. 62-2(9) authorizing special funding methods, including the use of supplier refunds and customer surcharges, to facilitate the expansion of natural gas service; and

(7) While the 1991 legislation has been successful in providing some natural gas service to previously unserved areas of the State, that legislation has not been sufficient to facilitate the extension of service that is necessary and in the public interest, and there are still counties with no gas service or virtually no gas service; and

(8) It is therefore necessary to authorize additional funding methods, including appropriations from the General Assembly and the proceeds of general obligation bonds, to further facilitate the expansion of natural gas service.

Section 16. Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-159. Additional funding for natural gas expansion.**

(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may provide funding through appropriations from the General Assembly or the proceeds of general obligation bonds as provided in this section to either (i) an existing natural gas local distribution company or (ii) a person or a gas district awarded a new franchise for the construction of natural gas facilities that it otherwise would not be economically feasible for the company or person to construct. The natural gas local distribution company with the existing franchise for any unserved county or counties shall have the first option to utilize funds provided under this section for the purpose of serving that particular county or counties.

(b) The use of funds provided under this section shall be pursuant to an order of the Commission after a public hearing. The Commission shall ensure that all projects for which funds are provided under this section are consistent with the intent of this

section and G.S. 62-2(9). In determining whether to approve the use of funds for a particular project pursuant to this section, the Commission shall consider the scope of a proposed project, including the number of unserved counties and the number of anticipated customers that would be served, the total cost of the project, the extent to which the project is considered feasible, and other relevant factors affecting the public interest. In determining economic feasibility, the Commission shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company or person to construct. All net present value calculations made pursuant to this section shall be made using rates that are no higher than the statewide average of natural gas rates. In no event shall the Commission provide funding under this section of an amount greater than the negative net present value of any proposed project as determined by the Commission. If at any time a project is determined by the Commission to have become economically feasible, the Commission shall require the recipient of funding to remit to the Commission appropriate funds related to the project, and the Commission may order those funds to be returned with interest in a reasonable amount to be determined by the Commission. Funds returned, together with interest, shall be deposited with the State Treasurer. Utility plant acquired with expansion funds shall be included in the local distribution company's rate base at zero cost except to the extent such funds have been remitted by the company pursuant to order of the Commission.

(c) To the extent that one or more of the counties included in a proposed project to be funded pursuant to this section are counties affected by the loss of exclusive franchise rights provided for in G.S. 62-36A(b), the Commission may conclude that the public interest requires that the person obtaining the franchise or funding pursuant to this section be given an exclusive franchise and that the existing franchise be canceled. Any new exclusive franchise granted under this subsection shall be subject to the provisions of G.S. 62-36A(b).

(d) The Commission, after hearing, shall adopt rules to implement this section as soon as practicable. The Commission and Public Staff shall report to the Joint Legislative Utility Review Committee on the use of funding provided under this section in conjunction with the reports required under G.S. 62-36A."

Section 17. G.S. 62-2 reads as rewritten:

"**§ 62-2. Declaration of policy.**

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

(1) To provide fair regulation of public utilities in the interest of the public;

(2) To promote the inherent advantage of regulated public utilities;

(3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;

(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;

(4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;

(5) To encourage and promote harmony between public utilities, their users and the environment;

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply; and

(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of ~~an~~ expansion ~~fund~~ funds for ~~each~~ natural gas local distribution ~~company~~ companies to be administered under the supervision of the North Carolina Utilities Commission.

(b) To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110, and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a finding that the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and maintenance of reasonably affordable local exchange service and long distance service."

Section 18. Effective date. Section 14 of this act becomes effective only if the voters approve the issuance of the Clean Water Bonds authorized by this act in the election required by Section 7 of this act. The remaining sections of this act are effective when the act becomes law, and the Utilities Commission shall begin immediately the rule-making process mandated by G.S. 62-159(d), as enacted by Section 17 of this act.

Senate Bill 1354
Proposed House Finance Committee Substitute
Explanation
7/15/98

The Proposed House Finance Committee Substitute for Senate Bill 1354 authorizes the issuance of general obligation bonds in the amount of $1 billion, subject to approval by the voters in a bond referendum, for $785 million in grants and loans to local governments for water supply systems, wastewater collection systems, wastewater treatment works, water conservation projects, and water reuse projects and for $215 million in grants, loans, and other financing to public or private entities for the construction of natural gas facilities.

The PCS contains the contents of House Bill 1492, 3rd Edition, with the following changes:

- A few technical changes noted by committee counsel.
- A couple of technical changes noted by the bond attorney.
- A few changes to G.S. 62-159, as proposed in Section 16 of the bill. The changes made in the PCS return the section to the way it substantially read prior to amendments adopted in the House Appropriations Subcommittee on Environment and Natural Resources. The PCS removes the ability of incumbent LDCs to have the first option to utilize expansion funds. It removes a reference to "the statewide average of natural gas rates" because there is no such average. The Utilities Commission sets the natural gas rates on a case by case basis. The rates may differ for a multitude of reasons: geography of the area served, the number of customers, the size of the pipes, etc. It also maintains the viability of the natural gas expansion revolving fund by stating that any funds returned to the State by the recipients of the expansion funds must be used for other expansion projects.

The PCS provides that the bond referendum will be held in November 1998. Two separate questions will appear on the ballot—one for the authorization of clean water bonds and one for the authorization of natural gas bonds.

The PCS provides for the allocation of the bond proceeds as follows:

Total:	**$ 1 billion**
A. State water/sewer grants for local governments.	**$465 million**
Administered by DENR	
1. Wastewater:	
• less than 75 bond rating or no bond rating	$ 70 million
• at least or equals 75 bond rating	$ 80 million
2. Hardship Grant Projects	$ 20 million
3. Water Supply:	
• less than 75 bond rating or no bond rating	$ 70 million

- at least or equals 75 bond rating $ 80 million

4. State match for EPA loan funds: $ 35 million
   - $ 7 million/year for five years

Administered by Department of Commerce

5. Economic development grants $ 60 million

Administered by Rural Economic Development Center

6. Supplemental grants: $ 50 million

B. Water/sewer loan funds for local governments. $320 million

(Direct loans/State pass-through bonds)

1. Wastewater:
   - less than 75 bond rating $ 10 million
   - at least or equals 75 bond rating $150 million
2. Water Supply:
   - less than 75 million $ 10 million
   - at least or equals 75 bond rating $150 million

C. Natural gas service. $215 million

Extend natural gas service to the remaining 22 unserved counties*

*Counties not likely to be served in the next two years

Section-by-Section Analysis

Section 1. Short title is Rural Infrastructure Bond Act of 1998.

Section 2. Purpose of the PCS is to authorize one billion dollars in general obligation bonds. The bond proceeds are to be allocated as follows:

1. $465 million to provide State matching funds for federal moneys and to provide grants to local government units for water and sewer needs.
2. $320 million to provide loans to local government units for water and sewer needs.
3. $215 million to provide grants, loans, or other financing to natural gas distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

Section 3. Definitions are set out.

Section 4. Bond bill "boiler plate" language. Authorizes the State Treasurer to issue and sell at any time Clean Water Bonds, subject to a favorable vote of the

people. Also authorizes the State Treasurer to issue and sell at any time Natural Gas Bonds, subject to a favorable vote of the people.

Section 5. Specifies what the bond proceeds may be used for and the amount of bond proceeds that may be used for each purpose. The two main purposes are (I) water and sewer needs (Clean Water Bonds) and (2) natural gas needs (Natural Gas Bonds).

The Clean Water Bond proceeds ($785 million) are divided into two categories, one for grants and one for loans.

Water/Sewer Grants ($465 million)

The total amount of bond proceeds that is to be used for grants to local governments is $465 million and is allocated among the Department of Environment and Natural Resources, the Department of Commerce, and the Rural Economic Development Center.

The **Department of Environment and Natural Resources is to receive $355 million** in bond proceeds and is to use those proceeds for high unit wastewater grants under the Clean Water Revolving Loan and Grant Fund, for high unit water supply grants under the Clean Water Revolving Loan and Grant Fund, to match federal funds in compliance with the statutory provisions of the Clean Water Revolving Grant and Loan Fund, and for hardship project grants that are awarded based on criteria developed by the United States Environmental Protection Agency for such grants. A high unit cost project is one that would require household water and sewer user fees to be greater than 1.5% of the median household income of the local government unit in which the project is located.

The **Department of Commerce is to receive $60 million** to be awarded as economic development grants in compliance with the statutory criteria of either the Industrial Development Fund or the Utility Account of the Industrial Development Fund. Money in the Industrial Development Fund may be used for projects located in an enterprise tier one, two, or three area that will directly result in the creation of new jobs. The funds may be expended at the rate of $4,000 per new job created up to a maximum of $400,000 per project. Funds in the Utility Account of the Industrial Development Fund may be used for projects located in enterprise tier one areas and there is no maximum funding amount per new job to be created or per project.

The bill sets forth some further limitations on the statutory criteria of the Development Funds: the funds shall be used only for grants, not loans; there is no match requirement; the projects are limited to the construction of or improvements to new or existing water or sewer projects; and the grants may be made with respect to manufacturing and processing and warehousing and wholesale trades.

The **Rural Economic Development Center is to receive $50 million** to use as supplemental and capacity grants to local governments in compliance with the

criteria set out in subdivision (3). Of the $50 million in bond proceeds, $40 million is allocated for supplemental grants and $10 million is allocated for capacity grants. However, no more than a total of $10 million in bond proceeds ($8 million limit on supplemental grants and $2 million limit on capacity grants) may be used in any fiscal year. A capacity grant may be used to pay all or a portion of the cost associated with the planning and writing of a grant or loan application, a capital improvement plan, or other efforts that support growth and development of rural areas. A rural county is defined as a county with a density of fewer than 200 people per square mile. A supplemental grant may be used to assist in financing wastewater collection systems, wastewater treatment works, water conservation projects, water reuse projects, or water supply systems. A supplemental grant may not exceed more than 50% of the total cost of the project financed.

The criteria for the grants to be administered by the Rural Economic Development Center is set out. The State Treasurer must review grants authorized by the Center for compliance with bond act requirements and grant criteria. The State Treasurer will hold the funds until the Center determines that the eligible project is ready to spend the funds. The Center must maintain expenditure records and must furnish those records to the State Treasurer at the time that a request for payment to or on behalf of the grantee is to be made.

Water/Sewer Loans ($320 million)

The total amount of bond proceeds that is to be used for loans to local governments is $320 million. Those proceeds are allocated to the **Department of Environment and Natural Resources** to be loaned out in compliance with the statutory criteria under the Revolving Loan and Grant Fund, but not as revolving loans. The repayment of the loans is to be used for debt service on the bonds and does not to go into the Revolving Loan and Grant Fund.

Natural Gas Financing ($215 million)

The total amount of proceeds that is to be used for natural gas needs is $215 million. Those proceeds may be used **to provide any type of financing to a natural gas local distribution company, private entity, public entity, or person seeking a natural gas distribution franchise for the construction of natural gas facilities.** The bond proceeds are to be expended under the direction and supervision of the Director of the Budget. The North Carolina Utilities Commission must report quarterly to the Join Legislative Commission on governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Fiscal Research Division on the expenditure of moneys from the Natural Gas Bonds Fund.

Section 6. Bond bill "boiler plate" language. Provides technical provisions governing allocation and disbursement of bond proceeds.

Section 7. Provides that the bond referendum shall be held on the first Tuesday after the first Monday of November 1998. There are two separate

questions, one addressing whether $785 million in general obligation bonds should be issued to make loans and grants to local governments to pay for all or part of the cost of clean water projects, and one addressing whether $215 million in general obligation bonds should be issued to provide grants, loans, or other financing to public or private entities for the construction of natural gas facilities.

Section 8. Bond bill "boiler plate" language. Provides technical provisions governing bonds, including terms, form, manner of sale, refunding bonds, etc.

Section 9. Bond bill "boiler plate" language. Provides technical provisions governing credit facilities, variable interest rates, redemption, and remarketing.

Section 10. Sets out special provisions and additional criteria governing clean water loans. Provides that the section applies only to loans that are not made from the Clean Water Revolving Loan and Grant Fund. Creates a special Clean Water Bonds Loan Fund for the bond proceeds that are to be used to make loans. Provides that interest on the proceeds may be used for loans for the purposes indicated in the PCS. Sets out the criteria that must be met to qualify for a loan and the procedures that must be followed both to apply for the loan and to award the loan including hearings and the opportunity for voters to petition for a vote. Authorizes the State to intercept State funds otherwise distributable to a local unit if the unit fails to repay its loan. Allows inspection by DENR personnel or qualified engineers of a project for which a loan has been made. Authorizes the State Treasurer, the Local Government Commission, and DENR to adopt, modify, and appeal rules as necessary for administration of their various duties. Also includes a reporting requirement.

Section 11. Sets out reporting requirements for the Rural Economic Development Center the Department of Commerce, and the Department of Environment and Natural Resources regarding grants awarded from bond proceeds.

Section 12. Requires the Department of Environment and Natural Resources, the Department of Commerce, and the Rural Economic Development Center to monitor compliance with goals for participation by minority businesses with regard to projects funded by bond proceeds.

Section 13. "Boilerplate language" governing interpretation of the act.

Section 14. Amends G.S. 159G-6 to increase the cap on the total amount of any loan made from the Clean Water Revolving Loan and Grant Fund from three million dollars to five million dollars and to increase the cap on the total amount of any grant made from the Clean Water Revolving Loan Grant Fund from one million dollars to two million dollars. Also makes a technical correction.

Section 15. Provides legislative findings stating the need for additional funding methods, including appropriations and bond proceeds, to facilitate the

expansion of natural gas service to unserved areas of the State where such expansion may not be economically feasible with traditional funding methods.

Section 16. Creates new G.S. 62-159 authorizing the Utilities Commission to provide funding for the expansion of natural gas service to unserved areas of the State through appropriations or bond proceeds for the construction of natural gas facilities that it would otherwise not be economically feasible to construct. Provides criteria for the Commission to consider in determining whether to approve the use of funds for a particular project. Provides for a recipient to return project funds to the Commission in the event that the project is later determined to be economically feasible and for returned funds to be used for other expansion projects.

Authorizes the Utilities Commission to cancel an existing franchise and grant a recipient of expansion funds a new exclusive franchise if the public interest requires it. Requires the Commission to report to the Joint Legislative Utility Review Committee on the use of expansion funding.

Section 17. Amends the policy statement in G.S. 62-2 to allow for more than one expansion fund to be established in order to facilitate the expansion of natural gas service to unserved areas of the State.

Section 18. Effective date. With the exception of Section 14, the act is effective when it becomes law. Section 14 becomes effective only if the bond referendum passes. The Utilities Commission must immediately begin rulemaking process when the act becomes law.

Implementation Guidelines
Proposed Funding
House PCS for SB 1354 - Rural Infrastructure Bonds

	Purpose/Definition	Amount Available	Eligibility Criteria	Other Emphasis	Amount of Funding Per Project
Clean Water Revolving Loan and Grant Fund (DENR)	Grants to local governments for water supply systems, wastewater collection systems, wastewater treatment works, water conservation projects, and water reuse projects	$300 million	- Local government unit - High unit cost project (would require estimated average household water and sewer user fees greater than 1.5% of the median household income of the local government unit.) - Compliance with federal, State, and local laws. - Agree to adopt and effect fee schedule to provide for proper operation, maintenance, and administration of project.	- Regionalization, consolidation & system mergers - Alternative methods of wastewater treatment - Capital improvement plan - Guidelines established by the US EPA Hardship Grant Program	$2 Million per project
State Match for Federal Funds (DENR)	Match required to draw down federal funds for the Clean Water Revolving Loan and Grant Fund	$35 Million ($7 Million a year)	Same as for Clean Water Revolving Loan and Grant Fund	Same as for Clean Water Revolving Loan and Grant Fund	Same as for Clean Water Revolving Loan and Grant Fund
Hardship Grants (DENR)	Grants to local governments to assist with wastewater treatment works and wastewater collection systems	$20 million	- Not a muicipality - No more than 3000 inhabitants - Lack centralized system - Per capita income not to exceed 80% of the national per capita income - Unemployment rate exceeds by 1% or more the national unemployment rate - Household user fees exceed 1.5% of the median household income	- Regionalization, consolidation, & system mergers - Capital Improvement Plan - Address critical public health problems	

	Purpose/Definition	Amount Available	Eligibility Criteria	Other Emphasis	Amount of Funding Per Project
Supplemental Grants (Rural Center)	Funds to assist in financing a needed water or sewer infrastructure project	$40 Million ($8 million Per Year) for Five Years	- Local Government unit - Economically depressed area or meet non-distressed criteria (p.11) - Located in a rural county - Job creation or retention	- Nutrient/pollutant reduction - Regionalization, consolidation & system mergers - Alternative methods of wastewater treatment - Capital Improvement Plan	50% for nondistressed county (Assume 100% for economically distressed counties)
Capacity Grants (Rural Center)	Funds to produce a grant or loan application for funding a required water/sewer improvement or to produce a capital improvement plan as required for receipt of bond funds	$10 Million ($2 million Per Year) For Five Years	Same	- Nutrient/pollutant reduction - Regionalization, consolidation & system mergers - Alternative methods of wastewater treatment - Capital Improvement Plan	Same
Clean Water Loans (DENR)	Loans to local government units for water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works	$320 Million	Local government unit Bond rating Water supply facility plan approved by DENR if water supply loan. Wastewater facility plan approved by DENR if wastewater treatment works loan Capital improvement plan Financial capacity to repay loan Compliance with federal, State, and local laws Agree to adopt and effect fee schedule to provide for proper operation, maintenance, and administration of project.	- Nutrient/pollutant reduction - Regionalization, consolidation & system mergers - Alternative methods of wastewater treatment - Capital improvement plan	No maximum per loan.

	Purpose/Definition	Amount Available	Eligibility Criteria	Other Emphasis	Amount of Funding Per Project
Natural Gas	Provide additional funding methods for natural gas expansion to unserved or underserved counties	$215 Million (plus any future appropria-tions)	Utilities Commission makes final project decision. Area must be unserved and project must be economically infeasible. Applicant can be existing franchise holder, new franchise applicant, or gas district	Scope of project, number of unserved counties involved, total cost, economic feasibility, other factors affecting the public interest	Depends on economic infeasibility

LIST OF SUPPORTERS
CLEAN WATER/NATURAL GAS BONDS

North Carolina Citizens for Business and Industry

North Carolina Economic Developers Association

North Carolina League of Municipalities

North Carolina Association of County Commissioners

North Carolina Rural Economic Development Center

American Water Works Association/Water Environment Association - NC

North Carolina Rural Water Association

Professional Engineer's Council - North Carolina Chapter

Consulting Engineer's Council - North Carolina Chapter

NC State Department of Environment and Natural Resources

NC State Department of Commerce

NC Home Builders Association

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: Senate Bill 1354 (Proposed House Comm. Sub.)
SHORT TITLE: Rural Infrastructure Bonds

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
EXPENDITURES (State General Fund)					
Debt Service *		$37.4 m	$73.7 m	$71.7 m	$69.6 m
Administration					
Department of Environment and Natural Resources	$0	$116,177	$113,513	$116,759	$120,213
Rural Economic Development Center	$0	$108,059	$110,951	$113,764	$116,759
Department of Commerce	$0	$108,600	$100,739	$103,794	$107,046
Utilities Commission		No Significant Fiscal Impact			
POSITIONS: (state agency)	0.00	4.00	4.00	4.00	4.00

**Represents the annual debt service requirements for the $680 million of bonds where the debt service will not be reimbursed by local government units. The total debt service for the $680 million portion of the $1.0 billion of bond authorization is projected to be $1.11 billion, or an average of $52.8 million per year over a 21-year period. The maximum annual impact of this debt service is estimated to be $73.7 million for the year 2000-01.*

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of State Treasurer, Local Government Commission (sale of bonds); Department of Environment and Natural Resources, Division of Water Quality, Division of Environmental Health (administration of $675 million in water and sewer loans and grants); Department of Commerce, Commerce Finance Center (administration of $60 million in economic development grants), Utilities Commission (administration of $215 million in natural gas expansion funds); Rural Economic Development Center (a state funded nonprofit organization will administer $50 million in water, sewer and capacity grants); Local Units of Government

EFFECTIVE DATE: Section 14 (amendments to Clean Water Revolving Loan and Grant Fund) is effective upon voter approval in statewide referendum; all other sections are effective when the act becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1354, PCS Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) _____
Sen.)

moves to amend the bill on page 8, line 29

( ) WHICH CHANGES THE TITLE

by deleting the word "above";

and on page 16, line 25

by deleting "3(6)" and substituting "3(7)";

and on page 20, line 35,

by deleting "5" and substituting "6";

and on page 34, line 8,

by deleting "17" and substituting "16".

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1354

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1354-ALC-1 Page 1 of __

Date_____,1998

Comm. Sub. [Yes]
Amends Title []
PCS4700 Edition

Representative_____

moves to amend the bill on page 14, lines 20-21, by adding the following between the lines:

"(6) To the extent otherwise authorized by law, and to the extent the use otherwise accomplishes the clean water objectives of the State, this act does not prohibit a local government unit from using the proceeds of Clean Water Bonds for projects that accomplish the clean water objectives of this State through contracts or other arrangements with private entities."

SIGNED Boodman
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1354
Finance Committee Substitute Adopted 6/17/98
Third Edition Engrossed 6/24/98
Proposed House Committee Substitute S1354-PCS8849-RB

Short Title: Rural Infrastructure Bonds. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO ADDRESS STATEWIDE RURAL INFRASTRUCTURE NEEDS BY PROVIDING FUNDS (1) FOR GRANTS AND LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION AND WATER REUSE PROJECTS AND (2) FOR GRANTS, LOANS, OR OTHER FINANCING TO PUBLIC OR PRIVATE ENTITIES FOR CONSTRUCTION OF NATURAL GAS FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Rural Infrastructure Bond Act of 1998".

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

(a) Clean Water Bonds.

(1) $465,000,000 to provide State matching funds required to receive federal wastewater or water supply assistance funds and to provide additional funding for the Clean Water Revolving Loan and Grant

Fund established in Chapter 159G of the General Statutes or to provide funding by grants to local government units for wastewater treatment and water supply and distribution needs;

(2) $320,000,000 to provide loans to local government units to finance all or a portion of the cost of construction, improvements, enlargements, extensions, and reconstruction of water supply and distribution systems, wastewater collection systems, wastewater treatment works, water conservation projects, and water reuse projects.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity, the criteria established by Chapter 159G of the General Statutes, and the guidelines established by the United States Environmental Protection Agency Hardship Grants Program shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply, on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management, and on having a capital improvement plan.

(b) Natural Gas Bonds.

$215,000,000 to provide grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

Section 3. Definitions. As used in this act, unless the context otherwise requires:

(1) "Bond rating" means the numerical rating of a unit of local government developed by the NCMC. The rating formula is based on 100 being a theoretically "perfect" unit of local government and is an assessment of the creditworthiness of the unit. Units of local government with a rating below 75 or with no ratings have limited, if any, access to the private markets for financing water and sewer or other debt.

(2) "Bonds" means bonds issued under this act.

(3) "Capacity grant" means a grant awarded by the Rural Economic Development Center to a local government unit to pay all or a portion of the cost associated with the planning and writing of a grant or loan application, a capital improvement plan, or other efforts that support growth and development of rural areas.

(4) "Capital improvement plan" means a report that identifies water and sewer infrastructure and capital needs that address planned and strategic growth. It shall include an assessment of current water and wastewater systems and a projection of those infrastructure needs over a 20-year horizon. The report shall take into consideration government mandates, usefulness of the improvements to the community and the effect on both short and long-term operation and maintenance of the scheduled improvements and identifies alternatives for meeting the identified need including regionalization, consolidation and system mergers, water reuse and conservation.

(5) "Clean Water Revolving Loan and Grant Act" means Chapter 796 of the 1987 Session Laws, as amended from time to time, codified as Chapter 159G of the General Statutes.

(6) "Clean Water Revolving Loan and Grant Fund" means the Clean Water Revolving Loan and Grant Fund as defined in the Clean Water Revolving Loan and Grant Act.

(7) "Cost" means, without intending thereby to limit or restrict any proper definition of this term in financing the cost of facilities or purposes authorized by this act:

a. The cost of constructing, reconstructing, enlarging, acquiring, and improving facilities, and acquiring equipment and land therefor,

b. The cost of engineering, architectural, and other consulting services as may be required,

c. Administrative expenses and charges,

d. Finance charges and interest prior to and during construction and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction,

e. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs of bond and note issuance, to the extent and as determined by the State Treasurer,

f. The cost of reimbursing the State for any payments made for any cost described above, and

g. Any other costs and expenses necessary or incidental to the purposes of this act.

Allocations in this act of proceeds of bonds to the costs of a project or undertaking in each case may include allocations to pay the costs set forth in items c., d., e., f., and g. in connection with the issuance of bonds for the project or undertaking.

(8) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company, or other insurance institution, a corporation, investment banking firm, or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.

(9) "Economically depressed area" means any of the following:

a. An economically distressed county as defined in G.S. 143B-437.01.

b. That part of a rural county whose poverty rate is at least one hundred fifty percent (150%) of the State poverty rate. For the purpose of this section, the poverty rate is the percentage of the population with income below the latest annual federal poverty guidelines issued by the United States Department of Health and Human Resources.

c. That part of a rural county that experiences an actual or imminent loss of manufacturing jobs in a number that is equal to or exceeds five percent (5%) of the total number of manufacturing jobs in the part.

(10) "Local government units" means local government units as defined in the Clean Water Revolving Loan and Grant Act.

(11) "NCMC" means the North Carolina Municipal Council, Inc., a nonprofit North Carolina corporation which provides bond ratings, or any successor thereto. In the event such corporation dissolves or no longer performs the functions contemplated herein, such term shall mean that comparable corporation designated by the State Treasurer.

(12) "Notes" means notes issued under this act.

(13) "Par formula" means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:

a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible,

b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or

c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

(14) "Rural county" means a county with a density of fewer than 200 people per square mile based on the United States census.

(15) "Rural Economic Development Center" means the Rural Economic Development Center, Inc., a nonprofit North Carolina corporation, or any successor thereto. In the event such corporation dissolves or no longer performs the functions contemplated herein, such term shall mean that comparable corporation designated by the Governor.

(16) "State" means the State of North Carolina.

(17) "Supplemental grant" means a grant awarded by the Rural Economic Development Center to a local government unit to assist in financing wastewater collection systems, wastewater treatment works, water conservation projects, water reuse projects, or water supply systems. Supplemental grant funds shall supplement other funding and shall not represent more than fifty percent (50%) of the total costs of the wastewater collection systems, wastewater treatment works, water conservation projects, water reuse projects, or water supply systems financed.

(18) "Unsewered communities" means those communities lacking centralized, publicly owned wastewater collection systems and wastewater treatment works.

(19) "Wastewater collection systems" means wastewater collection systems as defined in the Clean Water Revolving Loan and Grant Act.

(20) "Wastewater treatment works" means wastewater treatment works as defined in the Clean Water Revolving Loan and Grant Act.

(21) "Water conservation projects" include, but are not limited to, any construction, repair, renovation, expansion, replacement of components, or other capital improvement, including related equipment and land acquisition, designed to:

a. Eliminate the wasteful or unnecessary use or loss of water in the operations of a wastewater collection system, wastewater treatment works, or water supply system; or

b. Enhance the operation of a wastewater collection system, wastewater treatment works, or water supply system to provide a more efficient use of water.

(22) "Water Pollution Control Revolving Fund" means the fund described by G.S. 159G-4(a) and G.S. 159G-5(c).

(23) "Water reuse" means the actual use or application of treated wastewater in or on areas which require water but do not require potable water quality.

(24) "Water supply systems" means water supply systems as defined in the Clean Water Revolving Loan and Grant Act.

Section 4. Authorization of bonds and notes. (a) Clean Water Bonds. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Clean Water Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Clean Water Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding seven hundred eighty-five million dollars ($785,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

(b) Natural Gas Bonds. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Natural Gas Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Natural Gas Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding two hundred fifteen million dollars ($215,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

Section 5. Uses of bond and note proceeds. (a) Clean Water Bonds. The proceeds of Clean Water Bonds and notes shall be used for the purpose of making loans and grants to local governments as follows:

(1) The proceeds of three hundred fifty-five million dollars ($355,000,000) of Clean Water Bonds shall be used by the Department of Environment and Natural Resources to provide State matching funds required to receive federal wastewater or water supply assistance funds, for grants to local government units for the same purposes for which funds in the Clean Water Revolving Loan and Grant Fund may be used, and for grants to fund hardship projects in accordance with the guidelines established by the United States Environmental Protection Agency Hardship Grants Program. The grants shall be made for the

purpose of paying the cost of water supply systems, wastewater collection systems, and wastewater treatment works, water conservation projects, and water reuse projects.

Of the proceeds of the three hundred fifty-five million dollars ($355,000,000) referred to in this Section 5(a)(1), the sum of three hundred million dollars ($300,000,000) shall be allocated as follows:

a. High-Unit Cost Wastewater Account
   1. Reserved for grants to local government units whose bond rating is less than 75 or who have no bond rating $70,000,000
   2. Reserved for grants to local government units whose bond rating is 75 or greater..... $80,000,000

b. High-Unit Cost Water Supply Account
   1. Reserved for grants to local government units whose bond rating is less than 75 or who have no bond rating $70,000,000
   2. Reserved for grants to local government units whose bond rating is 75 or greater $80,000,000

The proceeds may be (i) transferred directly to the Clean Water Revolving Loan and Grant Fund to make grants, (ii) used to make grants directly to the appropriate local government qualifying for a grant from the Clean Water Revolving Loan and Grant Fund, (iii) used for any combination of (i) and (ii), or (iv) used in such other manner as shall effectuate the clean water purposes of this act.

The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, although public necessity, the criteria established by Chapter 159G of the General Statutes, and the guidelines established by the United States Environmental Protection Agency Hardship Grants Program shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply, on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management, and on having a capital improvement plan.

Of the proceeds of the three hundred fifty-five million dollars ($355,000,000) referred to in this Section 5(a)(1), the sum of thirty-five million dollars ($35,000,000) shall be used to provide State funds necessary for the 1999-2000, 2000-2001, 2001-2002,

2002-2003, and 2003-2004 fiscal years to match the federal wastewater or water supply assistance funds deposited in the Water Pollution Control Revolving Fund or another fund that is used to pay the cost of water supply systems, wastewater collection systems, or wastewater treatment works and is eligible to receive federal matching funds, unless the General Assembly has provided the required match through other sources, in which event this priority shall cease to exist to the extent of the availability of the other sources. The Department of Environment and Natural Resources shall certify to the State Treasurer the amount of funds required for the State match for each of the fiscal years ending June 30, 1999, June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, and June 30, 2004, and the extent to which the General Assembly has provided other funds for this purpose. Upon certification each year of the amount of funds required for the State match for that fiscal year, the State Treasurer may issue from the thirty-five million dollars ($35,000,000) the amount certified up to thirty-five million dollars ($35,000,000). Upon certification for the State match required for the fiscal year ending June 30, 2004, the State Treasurer may issue the remaining balance of the thirty-five million dollars ($35,000,000) of the Clean Water Bonds authorized by this subdivision for the purpose of funding the State match for that fiscal year and for any other purposes authorized by this subdivision. The proceeds of the bonds necessary for the State match for each fiscal year shall be deposited in the Water Pollution Control Revolving Fund or another appropriate fund or account determined by the State Treasurer.

Of the proceeds of the three hundred fifty-five million dollars ($355,000,000) referred to in this Section 5(a)(1), the sum of twenty million dollars ($20,000,000) shall be used to provide hardship grants to eligible local government units to assist with wastewater treatment works and wastewater collection systems. Such grants shall be awarded and administered by the Department of Environment and Natural Resources in accordance with the guidelines established by the United States Environmental Protection Agency Hardship Grants Program.

Although public necessity, the criteria established by Chapter 159G of the General Statutes, and the guidelines established by the United States Environmental Protection Agency Hardship Grants Program shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply, on the willingness and ability of local government units to meet their responsibilities through sound fiscal

policies, creative planning, and efficient operation and management, and on having a capital improvement plan.

(2) The proceeds of sixty million dollars ($60,000,000) of Clean Water Bonds shall be used for the purpose of making grants to local government units to pay the cost of clean water projects in connection with the location of industry to, and expansion of industry in, the State. These grants shall be awarded and administered by the Department of Commerce. These funds shall be applied to pay the costs of grants awarded in the same manner as funds in the Industrial Development Fund created in G.S. 143B-437.01(a), for use in accordance with G.S. 143B-437.01(a), subject to the further limitations on the provisions of G.S. 143B-437.01(a) set forth below, and shall be applied to pay the costs of grants awarded in the same manner as funds in the Utility Account of the Industrial Development Fund created in G.S. 143B-437.01(b1), for use in accordance with G.S. 143B-437.01(b1), subject to the further limitations on the provisions of G.S. 143B-437.01(b1) set forth below. In applying the provisions of G.S. 143B-437.01(a) or G.S. 143B-437.01(b1), as the case may be, the following exceptions shall apply:

a. The funds shall be used only for grants to local governments, not for loans.

b. Grants shall be awarded only to projects the Secretary of Commerce finds will have a favorable impact on the clean water objectives of the State.

c. The only purposes for which grants may be made are construction of or improvements to new or existing water or sewer distribution lines or equipment, construction of or improvements to new or existing wastewater treatment works, or improvements that will expand the capacity of existing wastewater treatment works or water supply systems.

d. The projects may be located only in counties that are economically distressed as defined in G.S. 143B-437.01 or have a population of less than 50,000.

e. Grants may be made with respect to the following industries as defined in G.S. 105-129.2: manufacturing and processing, and warehousing and wholesale trades.

f. No match is required for the grants.

g. The provisions of G.S. 143B-437.01(a) or G.S. 143B-437.01(b1), as the case may be, that limit the expenditure of funds to costs of utility lines or facilities located on the site of the new or proposed industrial building or that are directly related to the operation of the

specific industrial activity at the building, shall not apply if the utility lines or facilities being provided will further the clean water objectives of the State.

The General Assembly finds that the purpose of providing water and sewer distribution lines and wastewater treatment works in economically distressed counties is to provide clean water in North Carolina in several different ways. First, these projects will reduce industrial reliance on wells, septic tanks, and other similar facilities. Second, when a distribution line is extended to an industrial facility in an area not otherwise served by water and sewer infrastructure, residents, other businesses, and local governments can hook into the distribution line, bringing clean water, wastewater treatment, or both to the unserved area. Also, the installation and expansion of water supply and wastewater treatment facilities to provide water supply and wastewater treatment in connection with new or expanding industry will result in additional water supply and treatment facilities available to the residents, other businesses, and local governments in the area where the installation or expansion occurs.

The proceeds of the Clean Water Bonds, issued for the purpose described in this Section 5(a)(2), shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of the cost for the purpose for which the grant is made. The Department of Commerce shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made.

(3) The proceeds of fifty million dollars ($50,000,000) of Clean Water Bonds shall be used to provide supplemental and capacity grants to eligible local government units to match federal, State, and other grant or loan program funds to plan or improve needed water and sewer projects in economically depressed areas of North Carolina. Such grants shall be awarded and administered by the Rural Economic Development Center. Those proceeds shall be allocated as follows:

a. Supplemental Grants $40,000,000
b. Capacity Grants $10,000,000

The Rural Economic Development Center shall certify to the State Treasurer the amount of funds required, not to exceed eight million dollars ($8,000,000) for supplemental grants, not to exceed two million dollars ($2,000,000) for capacity grants, and not to exceed a total of ten million dollars ($10,000,000) in supplemental and capacity grants, for each of the fiscal years ending June 30, 1999, June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, and June 30, 2004. Upon certification each year of

the amount of funds required for that fiscal year, the State Treasurer may issue the amount certified up to ten million dollars ($10,000,000). Upon certification for the fiscal year ending June 30, 2004, the State Treasurer may issue the remaining balance of the fifty million dollars ($50,000,000) of the Clean Water Bonds authorized by this subdivision for any other purposes authorized by this subdivision.

Grants made from the proceeds of this fifty million dollars ($50,000,000) for supplemental grants shall be based on the following criteria:

a. The applicant shall be a local government unit.

b. The applicant shall be a rural county or a local government unit located in a rural county.

c. First priority shall be given to a water supply system, wastewater collection system, or wastewater treatment work that creates or retains jobs. A water supply system, wastewater collection system, or wastewater treatment work shall also receive funding priority if the project is located in an economically distressed county as defined by G.S. 143B-437.01.

d. A water supply system, wastewater collection system, or wastewater treatment work that is proposed in a nondistressed county must meet at least one of the following criteria: (i) be located in that part of a rural nondistressed county where the poverty rate is at least one hundred fifty percent (150%) of the State poverty rate, (ii) be located in that part of a rural nondistressed county where the unemployment rate is at least double the State unemployment rate for the most recent reporting period available, or (iii) be located in that part of a rural nondistressed county that experiences an actual or imminent loss of jobs in a number that equals or exceeds five percent (5%) of the total number of jobs in that part of the county. Any grant awarded for a water supply system, wastewater collection system, or wastewater treatment work in a nondistressed county shall be matched on a dollar-for-dollar basis in the amount of the grant awarded.

Although public necessity and the criteria listed above shall be the primary consideration in granting and loaning funds, great emphasis shall also be placed on the creation of efficient systems of regional wastewater disposal and regional water supply, on the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient

operation and management, and on having a capital improvement plan. However, funds shall not be expended for the repair or replacement of low-pressure pipe wastewater systems.

The Rural Economic Development Center shall award grants to units of local government for the purposes authorized by this Section 5(a)(2) in accordance with the criteria set forth above. When the Rural Economic Development Center authorizes a grant, the Rural Economic Development Center shall notify the State Treasurer of the authorization and shall submit to the State Treasurer the grant application and records relevant to the grant's authorization. The State Treasurer shall review the grant and relevant documents to verify that the grant complies with the requirements of this act. The State Treasurer shall complete the review no later than 30 days after the receipt of the grant application and relevant records from the Rural Economic Development Center, and shall notify the Rural Economic Development Center that the review has been completed and of the State Treasurer's findings.

The proceeds of the Clean Water Bonds issued for the purpose described in this section shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of costs for the purposes for which the grant is made. The Rural Economic Development Center shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made and shall furnish such records to the State Treasurer at the time a request for payment to or on behalf of a grantee is to be made.

At the end of each fiscal year, the Rural Economic Development Center shall provide to the State Treasurer any records that document the timing and purposes of the expenditures by the grantee units of local government of the proceeds of the grants funded from the proceeds of the Clean Water Bonds during that fiscal year that have not already been provided to the State Treasurer.

(4) The proceeds of three hundred twenty million dollars ($320,000,000) of Clean Water Bonds shall be used for the purpose of making loans to local government units to pay the cost of water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works. The proceeds shall be allocated as follows:

a. Wastewater collection systems and wastewater treatment works.
   1. Reserved for loans to local government units whose bond rating is less than 75 or who have no bond rating $10,000,000
   2. Reserved for loans to local government units whose bond rating is 75 or more $150,000,000

b. Water supply and distribution systems and water conservation projects.
   1. Reserved for loans to local government units whose bond rating is less than 75 or who have no bond rating $10,000,000
   2. Reserved for loans to local government units whose bond rating is 75 or more $150,000,000

The proceeds shall be used to make loans directly to local government units qualifying for a loan from the Clean Water Revolving Loan and Grant Fund or loaned in such other manner as shall effectuate the purposes of this act. To qualify for a loan for the purpose of paying the cost of water supply systems, a local government unit must have a water supply facility plan approved by the Department of Environment and Natural Resources. A water supply facility plan submitted by a local government unit to the Department under G.S. 143-355(l) will be sufficient to meet this requirement. To qualify for a loan for the purpose of paying the cost of wastewater collection systems or wastewater treatment works, a local government unit must have a wastewater facility plan approved by the Department of Environment and Natural Resources. A wastewater facility plan must project future wastewater treatment needs, must present a long-range plan to meet those needs, and must include plans for system operations and maintenance of the facilities being built with the bond proceeds. In addition, great emphasis shall also be placed on having a capital improvement plan.

The Department of Environment and Natural Resources shall set the priorities and determine the eligibility of local government units for these loans in accordance with Section 10 of this act. The form of the loans and the details thereof including, without limitation, the maturity, interest rate, and amortization schedule shall be determined, from time to time, by the State Treasurer. In making these determinations, the State Treasurer shall consider the purpose of the loans, the ability of local government units to repay the loans, and the security for the loans. The interest rates on these loans shall reflect the self-supporting nature of the loan program and shall be sufficient to cover

substantially all payments of debt service on the three hundred twenty million dollars ($320,000,000) of Clean Water Bonds and the issuance costs and administrative expenses associated with the issuance of these bonds and the making of these loans, subject to any applicable requirements of the federal tax law.

Repayments of the loans shall be credited to the General Fund and may be used to pay, directly or indirectly, debt service on the bonds and notes issued. Repayments may be initially placed into such fund or account as may be determined by the State Treasurer for the purpose of determining compliance with applicable requirements of the federal tax law and shall be expended and disbursed therefrom under the direction and supervision of the Director of the Budget.

(5) If bond proceeds remain unspent, five years from the date on which the bonds were issued, then the General Assembly may at any session after that five-year period of time increase or decrease the allocations of the proceeds of the Clean Water Bonds set forth in (1), (2), (3), (4), and (5) above, so long as the aggregate amount of the allocations does not exceed seven hundred eighty-five million dollars ($785,000,000).

(6) To the extent otherwise authorized by law, and to the extent the use otherwise accomplishes the clean water objectives of the State, this act does not prohibit a local government unit from using the proceeds of Clean Water Bonds for projects that accomplish the clean water objectives of this State through contracts or other arrangements with private entities.

(b) Natural Gas Bonds. The proceeds of Natural Gas Bonds and notes shall be used for the purpose of providing grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for the costs of constructing natural gas facilities, including pipelines, compressors, interests in real property, and related equipment for the delivery of natural gas in order to facilitate the expansion of natural gas facilities to unserved areas of the State in accordance with the findings of the General Assembly described in Section 15 of this act.

Section 6. Allocation of proceeds. (a) Clean Water Bonds. The proceeds of Clean Water Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Clean Water Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer and shall be disbursed as provided in this act. Moneys in the Clean Water Bonds Fund shall be allocated and expended as provided in this act.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or

from any other source for deposit to the Clean Water Bonds Fund may be placed in the Clean Water Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Clean Water Bonds Fund or any separate clean water fund or account established under this act may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment earnings with respect to grant moneys to the extent otherwise directed or restricted by the terms of the grant, may be (i) credited to the Clean Water Bonds Fund or any separate clean water fund or account established under this act, (ii) used to pay debt service on the bonds authorized by this act, (iii) used to satisfy compliance with applicable requirements of the federal tax law, or (iv) transferred to the General Fund of the State.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for making grants and loans authorized by this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

(b) Natural Gas Bonds. The proceeds of Natural Gas Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Natural Gas Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer, and shall be disbursed as provided in this act. Moneys in the Natural Gas Bonds Fund shall be allocated and expended as provided in this act. The proceeds may be used in accordance with G.S. 62-159 or may be distributed in accordance with the provisions of legislation enacted by the General Assembly in 1998 or later providing for the allocation of the bond proceeds for the purposes provided in this act.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any natural gas grants authorized by this act may be placed by the State Treasurer in the Natural Gas Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Natural Gas Bonds Fund or any separate natural gas fund or account established under this act may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment earnings with respect to grant money to the extent otherwise directed or restricted by the terms of the grant, may be (i) credited to the Natural Gas Bonds Fund or any separate natural gas fund or account established under this act; (ii) used to pay debt service on the Natural Gas Bonds authorized by this act; (iii) used to satisfy compliance with applicable requirements of the federal tax law; or (iv) transferred to the General Fund of the State.

The proceeds of Natural Gas Bonds and notes may be used with any other moneys made available by the General Assembly for providing grants, loans, or other financing in accordance with this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of Natural Gas Bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act for construction of natural gas facilities shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

The North Carolina Utilities Commission shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division on the expenditure of moneys from the Natural Gas Bonds Fund.

(c) Costs. Allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in Section 3(7)c., d., e., f., and g. of this act in connection with the issuance of bonds for that capital improvement or undertaking.

Section 7. Election. The questions of the issuance of the bonds authorized by this act shall be submitted to the qualified voters of the State at an election to be held on the first Tuesday after the first Monday of November 1998. Any other primary, election, or referendum validly called or scheduled by law at the time the election on the bond question provided for in this section is held may be held as called or scheduled. Notice of the election shall be given in the manner and at the times required by G.S. 163-33(8). The election and the registration of voters therefor shall be held under and in accordance with the general laws of the State. Absentee ballots shall be authorized in the election.

The State Board of Elections shall reimburse the counties of the State for all necessary expenses incurred in holding the election that are in addition to those

that would have otherwise been incurred, the same to be paid out of the Contingency and Emergency Fund or other funds available to the State Board of Elections.

Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The bond questions to be used in the ballots or voting systems shall be in substantially the following form:

"[ ] FOR [ ] AGAINST

the issuance of seven hundred eighty-five million dollars ($785,000,000) State of North Carolina Clean Water Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to make loans and grants to local government units to pay all or a portion of the cost of clean water projects."

"[ ] FOR [ ] AGAINST

the issuance of two hundred fifteen million dollars ($215,000,000) State of North Carolina Natural Gas Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to provide grants, loans, or other financing to public or private entities for construction of natural gas facilities in order to facilitate the expansion of natural gas facilities to unserved portions of the State."

If a majority of those voting on a bond question in the election vote in favor of the issuance of the bonds described in the question, those bonds may be issued as provided in this act. If a majority of those voting on a bond question in the election vote against the issuance of the bonds described in the question, those bonds shall not be issued.

The results of the election shall be canvassed and declared as provided by law for elections for State officers; the results of the election shall be certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Section 8. Issuance of bonds and notes. (a) Terms and Conditions. Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or

shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery, and bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as well as under this act.

(c) Manner of Sale; Expenses. Subject to determination by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate or rates of interest, which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or the notes, as the State Treasurer may determine. All expenses incurred in preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Notes; Repayment.

(1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

a. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;

b. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;

c. For the renewal of any loan evidenced by notes herein authorized;

d. For the purposes authorized in this act; and

e. For refunding bonds or notes as herein authorized.

(2) Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.

(e) Refunding Bonds and Notes. By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding bonds or notes issued pursuant to this act. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured.

(f) Tax Exemption. Bonds and notes shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes shall not be subject to taxation as to income.

(g) Investment Eligibility. Bonds and notes are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) Faith and Credit. The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. In addition to the State's right to amend any provision of this act to the extent it does not impair any contractual right of a bond owner, the State expressly reserves the right to amend any provision of this act with respect to the making and repayment of loans, the disposition of any repayments of loans, and any intercept provisions relating to the failure of a local government unit to repay a loan, the bonds not being secured in any respect by loans, any repayments thereof, or any intercept provisions with respect thereto.

Section 9. Variable interest rates. In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially or adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;

(2) Be additionally supported by a credit facility;

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Section 10. Special provisions governing clean water loans. (a) Scope. The provisions of this section shall apply to loans being made from the proceeds of bonds authorized by this act for clean water projects, other than from funds deposited in the Clean Water Revolving Loan and Grant Fund.

(b) Clean Water Bonds Loan Account. There is established in the Department of State Treasurer a special account to be known as the Clean Water Bonds Loan Account, which may include any special or segregated accounts the State Treasurer considers appropriate. There shall be deposited in the Clean Water Bonds Loan Account proceeds of the Clean Water Bonds and notes to be used to make loans, other than loans to be made through the Clean Water Revolving Loan and Grant Fund, to local government units for clean water projects as provided in this act.

Except as otherwise permitted by Section 6 of this act with respect to the use of investment earnings, all moneys accruing to the credit of the Clean Water Bonds Loan Account other than funds set aside for administrative expenses, including expenses related to determining compliance with applicable requirements of the

federal tax law and costs of issuance, shall be used to make loans for the purposes provided in this act. The State Treasurer shall be responsible for making and administering all loans pursuant to the provisions of this section.

(c) Application for Loans; Hearings.

(1) Eligibility/Initial Hearing.

a. Prior to filing an application for a loan, a local government unit shall hold a public hearing. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

b. All applications for loans shall be filed with the Department of Environment and Natural Resources. The form of the application shall be prescribed by the Department and shall require any information necessary to determine the eligibility for a loan under the provisions of this section. All applications approved by the Department of Environment and Natural Resources shall be filed with the Local Government Commission. Each applicant shall furnish to the Department of Environment and Natural Resources and the Local Government Commission information in addition or supplemental to the information contained in its application, upon request.

c. A local government unit shall not be eligible for a loan unless it demonstrates to the satisfaction of the Department of Environment and Natural Resources and the Local Government Commission that:

1. The applicant is a local government unit;
2. The applicant has the financial capacity to pay the principal of and interest on its proposed loan as evidenced by the approval of the Local Government Commission;
3. The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations, and ordinances, whether federal, State, or local; and
4. The applicant has agreed by official resolution to adopt and place into effect a schedule of fees and charges or the application of other sources of revenue which will provide adequate funds for proper operation, maintenance, and administration of the project and repayment of all principal and interest on the loan.

(2) Assessment. The Department of Environment and Natural Resources may require any applicant to file with its application an assessment of the impact the project for which the funds are sought

will have upon meeting the facility needs of the area within which the project is to be located.

(3) Hearing by the Department of Environment and Natural Resources or the Local Government Commission. A public hearing may be held by the Department of Environment and Natural Resources or the Local Government Commission at any time on any application. Public hearings may also be held by the Department of Environment and Natural Resources in its discretion upon written request from any citizen or taxpayer who is a resident of the county or counties in which the project is to be located or a resident of the local government unit that proposes to borrow moneys under this act, if it appears that the public interest will be served by the hearing. The written request shall set forth each objection to the proposed project or other reason for requesting a hearing on the application and shall contain the name and address of the persons submitting it. In deciding whether to grant a request for a hearing on an application, the Department of Environment and Natural Resources may consider the application, the written objections to the proposed project, and the facility needs and shall determine if the public interest will be served by a hearing. The determination by the Department of Environment and Natural Resources shall be conclusive, and all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application.

(4) Petition for Vote. A petition, demanding that the question of whether to enter into a loan agreement with the State under this act be submitted to voters, may be filed with the clerk of the local government unit applying for the loan within 15 days after the public hearing required by this section. The petition's sufficiency shall be determined and a referendum, if any, shall be conducted according to the standards, procedures, and limitations set out in G.S. 159-60 through G.S. 159-62.

(d) Priorities.

(1) Determination. Determination of priorities to be assigned each eligible project shall be made semiannually by the Department of Environment and Natural Resources during each fiscal year. Every eligible project shall be considered by the Department of Environment and Natural Resources with every other project eligible during this same priority period.

(2) Priority Factors. All applications for loans under this act shall be assigned a priority by the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall establish other priority factors criteria by rule.

(3) Assignment of Priority. A written statement relative to each priority assigned shall be prepared by the Department of Environment and Natural Resources and shall be attached to the application. The priority assigned shall be conclusive.

(4) Failure to Qualify. If an application does not qualify for a loan as of the prior period in which the application was eligible for consideration by reason of the priority assigned, the application shall be considered during the next succeeding priority period upon request of the applicant. If the application again fails to qualify for a loan during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time and may amend any pending application to include additional data or information.

(5) Withdrawal of Commitment. Failure of an applicant within one year after the date of acceptance of the loan to arrange for necessary financing of the proposed project or award of the contract of the construction of the proposed project shall constitute sufficient cause for withdrawal of the commitment. Prior to withdrawal of a commitment, the Department of Environment and Natural Resources shall give due consideration to any extenuating circumstances presented by the applicant as reasons for failure to arrange necessary financing or to award a contract, and the commitment may be extended for an additional period of time if, in the judgment of the Department of Environment and Natural Resources, the extension is justified.

(e) Disbursement. To be eligible to receive the loans provided for in this section, a local government unit must arrange to borrow the amounts necessary pursuant to rules adopted by the Local Government Commission. No funds shall be disbursed until the Department of Environment and Natural Resources gives a certificate of eligibility to the effect that the applicant meets all eligibility criteria and that all procedural requirements of this act have been met. The maximum principal amount of a loan shall be one hundred percent (100%) of the cost of any eligible project.

(f) Intercept. The governing body of a local government unit shall by resolution authorize to be included in its loan agreement a provision authorizing the State Treasurer, upon failure of the local government unit to make a scheduled repayment of the loan, to withhold from the local government unit any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan. In such event, notwithstanding any other provision of law, the State Treasurer is authorized to withhold and apply such funds to the repayment of the loan, except that such funds shall not be withheld if (i) before the execution of the loan agreement, such funds have been legally pledged to secure special obligation bonds or

other obligations of the local government unit, or (ii) after the execution of the loan agreement, such funds are legally pledged to secure special obligation bonds or other obligations of the local government unit as authorized in this subsection. After the execution of a loan agreement, all or any portion of the State funds specified in the loan agreement to be so withheld may be pledged to secure special obligation bonds or other obligations of the local government unit only with the prior written consent of the State Treasurer.

The State Treasurer shall notify the Secretary of Revenue and the State Controller of the amount to be withheld from the local government unit, and the Secretary of Revenue and the State Controller shall transfer to the State Treasurer the amount so requested to be applied by the State Treasurer to the repayment of the loan.

(g) Inspection. Inspection of a project for which a loan has been made under this act may be performed by qualified personnel of the Department of Environment and Natural Resources or may be performed by qualified engineers registered in this State approved by the Department of Environment and Natural Resources. No person shall be approved to perform inspections who is an officer employed by the local government unit to which the loan was made or who is an owner, officer, employer, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan was made. For the purpose of payment of inspection fees, inspection services shall be included in the term "cost" as used in this act.

(h) Rules. The State Treasurer, the Local Government Commission, and the Department of Environment and Natural Resources may adopt, modify, and repeal rules necessary for the administration of their respective duties under this act. Uniform rules may be jointly adopted where feasible and desirable, and no rule, jointly adopted, may be modified or revoked except upon concurrence of all agencies involved.

(i) Federal Grants and Loans. In order to carry out the purposes of this act to secure the greatest possible benefits to the citizens of this State of the funds appropriated, the State Treasurer, the Local Government Commission, and the Department of Environment and Natural Resources shall adopt rules and criteria, not inconsistent with provisions of this act, as are necessary and appropriate to conform to regulations for federal grants and loans for any of the purposes set forth in this act.

(j) Report by Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of loans authorized by this act. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of loans authorized and unallocated funds for the loan program as of the end of the preceding fiscal year;

(2) Identification of each loan agreement entered into by the State during the preceding fiscal year and the total amount of loans authorized by such loan agreements;

(3) The amount disbursed to each local government unit pursuant to such loan agreements during the preceding fiscal year and the total amount of such disbursements;

(4) The loan repayments made by each local government unit pursuant to such loan agreements and the total amount of such loan repayments during the preceding fiscal year; and

(5) A summary for the five preceding years of the information required by subdivisions (1) through (4) of this subsection.

The report shall be signed by the Secretary of Environment and Natural Resources.

(k) Local Government Commission.

(1) Local government units may execute debt instruments payable to the State in order to obtain loans provided for in this act. Local government units shall pledge or agree to apply as security for such obligations:

a. Any available source of revenues of the local government unit, including revenues from benefitted facilities or systems, provided that (i) the local government unit has not otherwise pledged the revenues as security for, or contractually agreed to apply the revenues to, the payment of any other obligations of the local government unit, (ii) the use of the revenues is not otherwise restricted by law, or (iii) the revenues are not derived from the exercise of the local government unit's taxing power; or

b. Their faith and credit; or

c. Any combination of a. or b. above.

The faith and credit of a local government unit shall not be pledged or be deemed to have been pledged unless the requirements of Article 4 of Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this act.

(2) Nothing contained in this act shall prohibit any local government unit from applying any funds of the local government unit not otherwise restricted as to use by law to the payment of any debt instrument payable to the State incurred pursuant to the provisions of this act.

(3) The Local Government Commission shall review and approve proposed loans to local government units under this act under the provisions of Articles 4 and 5 of Chapter 159 of the General Statutes. The Local Government Commission in considering the ability of a local government unit to repay a loan may regard as a source of revenue for repayment of a loan revenue sources that

may not be available other than on an annual discretionary basis and that may not be subject to a pledge or agreement to apply. Loans under this act shall be outstanding debts for the purposes of Article 10 of Chapter 159 of the General Statutes.

(4) The State Treasurer shall annually certify to the General Assembly the financial condition of the loan program and identify existing delinquencies.

Section 11. Reports. (a) The Rural Economic Development Center shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Chair of the Board of Directors of the Rural Economic Development Center. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;

(2) Identification of each grant agreement entered into by the Rural Economic Development Center during the preceding fiscal year and the total amount of grants authorized by the grant agreements;

(3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and

(4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

(b) The Department of Environment and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Secretary of Environment and Natural Resources. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;

(2) Identification of each grant agreement entered into by the Department of Environment and Natural Resources during the preceding fiscal year and the total amount of grants authorized by the grant agreements;

(3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and

(4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

(c) The Department of Commerce shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Secretary of Commerce. The report shall set forth for the preceding fiscal year:

(1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;

(2) Identification of each grant agreement entered into by the Department of Commerce during the preceding fiscal year and the total amount of grants authorized by the grant agreements;

(3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and

(4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

Section 12. Minority business participation. The goals set by G.S. 143-128 for participation in projects by minority businesses apply to projects funded by the proceeds of bonds or notes issued under this act. The Department of Environment and Natural Resources, the Department of Commerce, and the Rural Economic Development Center shall monitor compliance with this requirement and shall report to the General Assembly by January 1 of each year on the participation by minority businesses in these projects.

Section 13. Interpretation of act. (a) Additional Method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes or to specific acts are intended to be references to these sections, Chapters, or acts as they may be amended from time to time by the General Assembly.

(c) Broad Construction. This act, being necessary for the health and welfare of the people of the State, shall be broadly construed to effect the purposes thereof.

(d) Inconsistent Provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, or parts thereof, the provisions of this act shall be controlling.

(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 14. G.S. 159G-6 reads as rewritten:

"**§ 159G-6. Distribution of funds.**

(a) Revolving loans and grants.

(1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to local government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.

(2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one local government unit during any fiscal year shall be ~~three~~ five million dollars ~~($3,000,000).~~ ($5,000,000). The maximum principal amount of grants made to any one local government unit during any fiscal year shall be ~~one~~ two million dollars ~~($1,000,000).~~ ($2,000,000).

(3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a local government unit to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the local government unit to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. -- The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average

household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the ~~county~~ local government unit in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in ~~subsection~~ subdivision (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. -- The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(c) Water Supply Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.

(1) General Water Supply Revolving Loan and Grant Account. -- The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.

(2) High-Unit Cost Water Supply Account. -- The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.

(3) Emergency Water Supply Revolving Loan Account. -- The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present or imminent in a community.

(d) Repealed by Session Laws 1991, c. 186, s. 4.

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder."

Section 15. The General Assembly finds that:

(1) The General Assembly has previously found that it is the policy of this State to facilitate the extension of natural gas facilities to unserved areas of the State; and

(2) The extension of natural gas facilities to unserved areas of the State is necessary for the health of the people and of the environment; and

(3) The extension of natural gas facilities to unserved areas of the State will aid and encourage the location of manufacturing enterprises and industrial facilities in those areas of the State, will encourage new construction, homes, and other businesses in those areas of the State, will increase the population, taxable property, agricultural industries, and business prospects in the State; and

(4) The 1989 General Assembly in Chapter 338 of the 1989 Session Laws directed the North Carolina Utilities Commission to require the franchised natural gas local distribution companies to file reports with the Commission detailing their plans for providing natural gas service in areas of the State where natural gas service is not available, and directed the Commission and the Public Staff to provide independent analyses and summaries of those reports together with status reports of natural gas service in the State to the Joint Legislative Utility Review Committee; and

(5) The reports of the utilities, the Commission, and the Public Staff indicate that the construction of facilities and the extension of natural gas service in some areas of the State may not be economically feasible with traditional funding methods; and

(6) The 1991 General Assembly enacted G.S. 62-158 and G.S. 62-2(9) authorizing special funding methods, including the use of supplier refunds and customer surcharges, to facilitate the expansion of natural gas service; and

(7) While the 1991 legislation has been successful in providing some natural gas service to previously unserved areas of the State, that legislation has not been sufficient to facilitate the extension of service that is necessary and in the public interest, and there are still counties with no gas service or virtually no gas service; and

(8) It is therefore necessary to authorize additional funding methods, including appropriations from the General Assembly and the proceeds of general obligation bonds, to further facilitate the expansion of natural gas service.

Section 16. Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-159. Additional funding for natural gas expansion.**

(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may provide funding through appropriations from the General Assembly or the proceeds of general obligation

bonds as provided in this section to either (i) an existing natural gas local distribution company or (ii) a person or a gas district awarded a new franchise for the construction of natural gas facilities that it otherwise would not be economically feasible for the company or person to construct.

(b) The use of funds provided under this section shall be pursuant to an order of the Commission after a public hearing. The Commission shall ensure that all projects for which funds are provided under this section are consistent with the intent of this section and G.S. 62-2(9). In determining whether to approve the use of funds for a particular project pursuant to this section, the Commission shall consider the scope of a proposed project, including the number of unserved counties and the number of anticipated customers that would be served, the total cost of the project, the extent to which the project is considered feasible, and other relevant factors affecting the public interest. In determining economic feasibility, the Commission shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company, person, or gas district to construct. In no event shall the Commission provide funding under this section of an amount greater than the negative net present value of any proposed project as determined by the Commission. If at any time a project is determined by the Commission to have become economically feasible, the Commission shall require the recipient of funding to remit to the Commission appropriate funds related to the project, and the Commission may order those funds to be returned with interest in a reasonable amount to be determined by the Commission. Funds returned, together with interest, shall be deposited with the State Treasurer to be used for other expansion projects pursuant to the provisions of this section. A utility plant acquired with expansion funds shall be included in the local distribution company's rate base at zero cost except to the extent such funds have been remitted by the company pursuant to order of the Commission. In the event a gas district wishes to sell or otherwise dispose of facilities financed with funds received under this section, it must first notify the Commission which shall determine the method of repayment or accounting for those funds.

(c) To the extent that one or more of the counties included in a proposed project to be funded pursuant to this section are counties affected by the loss of exclusive franchise rights provided for in G.S. 62-36A(b), the Commission may conclude that the public interest requires that the person obtaining the franchise or funding pursuant to this section be given an exclusive franchise and that the existing franchise be canceled. Any new exclusive franchise granted under this subsection shall be subject to the provisions of G.S. 62-36A(b). This subsection does not apply to gas districts formed under Article 28 of Chapter 160A of the General Statutes.

(d) The Commission, after hearing, shall adopt rules to implement this section as soon as practicable. The Commission and Public Staff shall report to the Joint Legislative Utility Review Committee on the use of funding provided under this section in conjunction with the reports required under G.S. 62-36A."

Section 17. G.S. 62-2 reads as rewritten:

"**§ 62-2. Declaration of policy.**

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

(1) To provide fair regulation of public utilities in the interest of the public;

(2) To promote the inherent advantage of regulated public utilities;

(3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;

(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;

(4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;

(5) To encourage and promote harmony between public utilities, their users and the environment;

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply; and

(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of ~~an~~ expansion ~~fund~~ funds for ~~each~~ natural gas local distribution ~~company~~ companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission.

(b) To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110, and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a finding that the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and

maintenance of reasonably affordable local exchange service and long distance service."

Section 18. Effective date. Section 14 of this act becomes effective only if the voters approve the issuance of the Clean Water Bonds authorized by this act in the election required by Section 7 of this act. The remaining sections of this act are effective when the act becomes law, and the Utilities Commission shall begin immediately the rule-making process mandated by G.S. 62-159(d), as enacted by Section 16 of this act.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1354 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO ADDRESS CRITICAL STATEWIDE NEEDS BY PROVIDING FUNDS (1) FOR GRANTS AND LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY AND DISTRIBUTION SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, WATER CONSERVATION PROJECTS, AND WATER REUSE PROJECTS (2) FOR GRANTS, LOANS, OR OTHER FINANCING TO PUBLIC OR PRIVATE ENTITIES FOR CONSTRUCTION OF NATURAL GAS FACILITIES, AND (3) FOR GRANTS OR LOANS FOR RURAL SCHOOLS FOR A SCHOOL WATER OR WASTEWATER PROJECT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

☐

FOR JOURNAL USE ONLY

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

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

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

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

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

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

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

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

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

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

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

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

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

VISITOR REGISTRATION SHEET

House Finance — July 21, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Long	Martin Marietta
Chris Heagarty	Electric Coops
Jim McKillop	Moore Van Allen
LEIGHTON ROPER	"
Bill McAulay	PSNC
[illegible]	Poyner & Spruill
Nancy Bradley	NCCBI
Andy Romanet	N.C.L.M.
Jim Blackburn	NC Association of County Commissioners
[illegible]	NC Farm Bureau Federation
Doug Rogers	NCDOT
L. Gunn	REDC

VISITOR REGISTRATION SHEET

Horse Pasture

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
David Knight	NCAFA, NC Sierra Club
Nat Mund	Conservation Council of NC
Bill Holman	DENR
R. Paul Wilms	NCHBA
R. Rogers	DENR
Billy Ray Hall	Rural Center
Jean Greenstein	REDC
Jerry Perkins	DWS - DENR - NC DENR
Eddy Burke	NC DENR DWQ
Doug Lassiter	NC Septic Tank Assoc.
Natalie Haskins	Charlotte Chamber
Jay Hardesty	NCPC / FBanks

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Joe Pennaccia	Piedmont Natural Gas Co.
Dave Simmons	Zebulon, NC
[illegible]	NCCCS
[illegible]	Off of the Gov.
Betsy Kane	NCLM
Ellis Hankins	NCLM
Molly Diggins	NC Sierra
Jeb Alley	ZDA / PA
Stewart Duckworth	DOC Finance Center
Kathy Sawyer	Commerce
Lisa Percy	Capitol Group
Katherine Davis	ElectriCities

VISITOR REGISTRATION SHEET

Horse Issues

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Donna Rosefield	DCR
Alan Nicks	Beaty & Dixon LLP
Mike Compton	NCCBA
Clifton Metcalf	NRCS GA

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, JULY 21, 1998

8:30 A.M. ROOM 544-LOB

Rep. C. Wilson called the meeting to order and introduced the Pages.

HB-1369 COMM. COLL. LEASE PURCHASE AUTHORITY

Rep. Rayfield explained the bill. Rep. Brown moved for a favorable report. Rep. Womble asked if there is any opposition. Rep. Rayfield advised he knew of none. Rep. Cole questioned the cut-off and Rep. Rayfield and Ms. Martha Harris, Bill Drafting Division, responded. Rep. Nichols asked about purchasing approval. Rep. Rayfield responded. The vote was taken and the bill was given a favorable report.

SB-138 PVT H20 SYS. LOAN/DISSOLVE SAN. DIST.

Rep. Rayfield explained this bill. Mr. Andy Romenet, League of Municipalities, was asked to address members. He shared concerns and explained which sections of the bill they would support. Rep. Nichols had questions regarding grants. Mr. Jeff Hudson, Research Division, responded. Ms. Linda Sewell, Division of Environmental Health addressed this issue also. Rep. Nichols also asked about interest rates. Mr. Ron Brown, Utilities Commission, responded. Rep. Nichols then spoke on the bill and shared concerns. Mr. Jim Blackburn, County Commissioners Association, addressed members about their concerns. Rep. Luebke expressed concerns. Chairman Wilson announced this would be sent to a sub-sub-committee. Discussion continued. Rep. Cole wanted to make sure it would return to our full committee and she advised it would. Rep. Dedmon questioned the sanitary district section of the bill. Rep. Rayfield and Mr. Hudson both responded. Rep. Luebke questioned Page 5 lines, 2 and 35 which refers to grants. Mr. Hudson advised that generic language was used. Rep. Starnes asked about well digging. Ms. Sewell responded. The bill was sent to a sub-sub committee.

SB-1001 - EXPAND AMUSEMENT TAX EXEMPTION

Senate Kinnaird explained the bill. Rep. Gray moved to adopt the proposed committee substitute for discussion. So moved. Rep. Baddour moved for a favorable report, unfavorable to the original bill. Rep. Gray and Rep. Hensley spoke in support of the bill. The vote was taken and passed as moved.

SB-245 INSTALLMENT PURCHASE/SEWER DISTRICT

Sen. Ledbetter explained the bill. Rep. Buchanan moved for a favorable report. Rep. Hensley questioned the sponsor and he answered. The vote was taken and given a favorable report.

Chairman Wilson announced the sub-sub-committee members for SB-138. They are: Reps. Rayfield, chairman, Nichols, Eddins and Cole.

The meeting adjourned at 9:08.

Connie Wilson
Rep. C. Wilson, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

TUESDAY, JULY 21, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. C. Wilson

BILLS FOR DISCUSSION:

HB-1369	Comm. Coll. Lease Purchase Authority	Rep. Rayfield
SB-138	PVT H20 Sys. Loan/Dissovle San. Dist.	Sen. Odom
SB-245	Installment Purchase/Sewer Dist.	Sen. Ledbetter
SB-1001	Expand Amusement Tax Exemption	Sen. Kinnaird

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1369*
Committee Substitute Favorable 6/3/98

Short Title: Comm. Colleges' Lease Purchase Authority. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO CLARIFY COMMUNITY COLLEGES' AUTHORITY TO ENTER INTO LEASE PURCHASE AND INSTALLMENT PURCHASE CONTRACTS FOR EQUIPMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-20 is amended by adding a new subdivision to read:

"(11) To enter into lease purchase and installment purchase contracts for equipment under G.S. 115D-58.14."

Section 2. Article 4A of Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-58.14. Lease purchase and installment purchase contracts for equipment.**

(a) Authority. -- The board of trustees of a community college may use lease purchase or installment purchase contracts to purchase or finance the purchase of equipment as provided in this section.

(b) Contract Approval. -- Contracts for more than one hundred thousand dollars ($100,000) or for a term of more than three years shall be subject to review and approval by the State Board of Community Colleges if the obligation will be paid from State funds or by the tax-levying authority of the institution if the obligation will be paid from local funds. If a contract is approved by a tax-levying authority under this subsection, in each year the tax-levying authority shall appropriate sufficient funds to meet the amounts to be paid during the fiscal year under the contract.

(c) Local Government Commission. -- A contract that is subject to approval by the tax-levying authority also shall be subject to approval by the Local Government Commission as provided in Article 8 of Chapter 159 of the General Statutes if the contract:

(1) Extends for five or more years from the date of the contract;

(2) Obligates the board of trustees to pay sums of money to another, regardless of whether the payee is a party to the contract; and

(3) Obligates the board of trustees to pay five hundred thousand dollars ($500,000) or more over the full term of the contract.

(d) Application of Section. -- When determining whether a contract is subject to approval under this section the total cost of exercising an option to upgrade property shall be taken into consideration. The term of a contract shall include periods that may be added to the original term through the exercise of an option to renew or extend.

(e) Nonsubstitution Clause. -- No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a board of trustees to:

(1) Continue to provide a service or activity; or

(2) Replace or provide a substitute for any property financed or purchased by the contract.

(f) Nonappropriations Clause. -- No deficiency judgment may be rendered against any board of trustees, any tax-levying authority, the State Board of Community Colleges, or the State of North Carolina in any action for breach of a contractual obligation authorized by this section. The taxing power of a tax-levying authority and the State is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section."

Section 3. G.S. 115D-5 is amended by adding a new subsection to read:

"(l) The State Board shall review and approve lease purchase and installment purchase contracts as provided under G.S. 115D-58.14(b). The State Board shall adopt policies and procedures governing the review and approval process."

Section 4. This act is effective when it becomes law and applies to contracts entered into on or after that date.

EXPLANATION OF HOUSE BILL 1369:
Community Colleges' Lease Purchase Authority

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 20, 1998
SPONSOR: Representative Rayfield

House Bill 1369 gives community colleges the specific statutory authority to enter into lease purchase and installment purchase contracts for equipment. This authority will allow community colleges to purchase equipment and make payments over a period of time. The bill is effective upon becoming law and would apply to contracts entered into on or after that date.

Under current law, the authority of community colleges to enter into lease purchase and installment purchase contracts is not clear. The bill clarifies that authority and creates a new statute, G.S. 115D-58.14, which outlines the process a community college must follow in order to purchase equipment through a lease purchase or installment purchase contracts:

- Community college boards of trustees would have the authority to enter into these contracts without any prior approval if the contract is for less than $100,000 or is for less than 3 years.
- If the community college is going to use State appropriated funds to pay for the equipment and the lease purchase contract exceeds $100,000 or 3 years, the State Board of Community Colleges must review and approve the contract.
- If the community college is going to use local funds to pay for the equipment and the contract exceeds $100,000 or 3 years, the tax levying authority that is directly responsible for the local financial support and local administration of the college must review and approve the contract. When the tax levying authority approves the installment purchase contract, it is required to appropriate sufficient funds in subsequent years to meet the obligation. The Local Government Commission must also approve the contract if it exceeds 5 years and $500,000.

The taxing power of the State or the county may not be pledged to finance these lease purchase contracts. In the event a college failed to make its payments, the vendor's only recourse would be to repossess the equipment. The vendor could not sue the college, the tax levying authority, the State Board of Community Colleges, or the State for additional monies owned.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1369 A BILL TO BE ENTITLED AN ACT TO CLARIFY COMMUNITY COLLEGES' AUTHORITY TO ENTER INTO LEASE PURCHASE AND INSTALLMENT PURCHASE CONTRACTS FOR EQUIPMENT.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 138
House Committee Substitute Favorable 7/15/98
Corrected Copy 7/17/98

Short Title: Pvt. H20 Sys. Loan/Dissolve Sanitary Dist. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN PRIVATELY OWNED COMMUNITY WATER SYSTEMS TO BE ELIGIBLE FOR REVOLVING LOANS AND GRANTS FROM THE DRINKING WATER TREATMENT REVOLVING LOAN FUND AND TO ALLOW AN ALTERNATIVE PROCEDURE FOR DISSOLUTION OF A SANITARY DISTRICT THAT HAS NO INDEBTEDNESS AND THE TERRITORY OF WHICH HAS BEEN ENTIRELY ANNEXED.

The General Assembly of North Carolina enacts:

Section 1.1. G.S. 159G-3 reads as rewritten:

"(2) 'Applicant' means a local government unit that applies for a revolving loan or grant under the provisions of this Chapter. In addition, a local government may provide funds to a nonprofit agency which is currently under contract and authorized to provide wastewater treatment or water supply services to that ~~unit of local government.~~ local government unit. For purposes of the Drinking Water Treatment Revolving Loan Fund established by G.S. 159G-5(d), 'applicant' also means a privately owned community water system, as defined in G.S. 130A-313, that operates as a public utility, as defined in G.S. 62-3, and that has obtained a certificate of convenience and necessity under G.S. 62-110."

Section 1.2. G.S. 159G-3(6a) reads as rewritten:

"(6a) 'Debt instrument' means an instrument in the nature of a promissory note executed by ~~a local government unit~~ an applicant under the provisions of this Chapter, to evidence a debt to the State and obligation to repay the principal, plus interest, under stated terms."

Section 1.3. G.S. 159G-3(5) reads as rewritten:

"(5) 'Grant' means a sum of money given by the State to ~~a local government unit~~ an applicant to subsidize the construction costs of a project authorized by this Chapter, without any obligation on the part of such unit to repay such sum."

Section 1.4. G.S. 159G-3(13) reads as rewritten:

"(13) 'Revolving construction loan' means a sum of money loaned by the State to ~~a local government unit~~ an applicant to subsidize the construction costs of a project authorized by this Chapter, with an obligation on the part of such unit to repay such sum, the proceeds of such repayment to be deposited in the ~~Water Pollution Control Revolving Fund.~~ fund from which the loan was made."

Section 2. G.S. 159G-4(c) reads as rewritten:

"(c) All payments of interest and repayments of principal resulting from revolving loans shall be credited to the respective accounts from which the revolving loan funds were disbursed. Terms and conditions for repayment of revolving loans shall be established by the Department of Environment and Natural Resources, with the assistance of the Local Government Commission, consistent with the requirements of the Federal Water Pollution Control Act and this Chapter. Provided, the interest rate for all revolving loans authorized by this Chapter shall be fixed at the same percent per annum as the interest rate fixed under the Federal Water Pollution Control Act for loans from the Water Pollution Control Revolving Fund established by G.S. 159G-5(c), not to exceed the lesser of four percent (4%) or one half (1/2) the prevailing national market rate for tax exempt general obligation debt of similar maturities derived from a published indicator. Provided further, the interest rate may be fixed at a lower rate per annum if authorized by the Federal Water Pollution Control Act Regulations. It is the intent of the General Assembly to provide uniform interest payments for all loans made to ~~units of local government~~ applicants irrespective of the account from which loans are made for either wastewater or water supply projects."

Section 3. G.S. 159G-5(d) reads as rewritten:

"(d) The Drinking Water Treatment Revolving Loan Fund is established as a special account within the Clean Water Revolving Loan and Grant Fund. This account shall be established and managed in accordance with the requirements of section 130 of Title I of the federal Safe Drinking Water Act Amendments of 1996 (Pub. L. 104-182; 110 Stat. 1662; 42 U.S.C. § 300j-12), to achieve the purposes and goals of the federal Safe Drinking Water Act Amendments of 1996. The funds in the Drinking Water Treatment Revolving Loan Fund may be used only for the purposes

of providing revolving construction loans and other assistance as set forth in section 130 of Title I of the federal Safe Drinking Water Act Amendments of 1996 and the regulations promulgated thereunder, including making grants to the extent permitted by these amendments or these regulations. Funds in the Drinking Water Treatment Revolving Loan Fund may be used by an applicant that is a privately owned community water system only for a project that benefits a local government unit and that is consistent with a local water supply plan that has been prepared and approved in accordance with G.S. 143-355(l)."

Section 4. G.S. 159G-6 reads as rewritten:

"**§ 159G-6. Distribution of funds.**

(a) Revolving loans and grants.

(1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to ~~local government units~~ applicants for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.

(2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one ~~local government unit~~ applicant during any fiscal year shall be three million dollars ($3,000,000). The maximum principal amount of grants made to any one ~~local government unit~~ applicant during any fiscal year shall be one million dollars ($1,000,000).

(3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to ~~a local government unit~~ an applicant to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the ~~local government unit~~ applicant to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Wastewater

Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. -- The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the county in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subsection (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. -- The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(c) Water Supply Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to ~~local government units~~ applicants as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.

(1) General Water Supply Revolving Loan and Grant Account. -- The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.

(2) High-Unit Cost Water Supply Account. -- The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.

(3) Emergency Water Supply Revolving Loan Account. -- The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present or imminent in a community.

(d) Repealed by Session Laws 1991, c. 186, s. 4.

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder."

Section 5. G.S. 159G-9 reads as rewritten:

"**§ 159G-9. Eligibility.**

No application shall be eligible for a revolving loan or grant under this Chapter unless it shall demonstrate to the satisfaction of the receiving agency that:

(1) The applicant is ~~a local government unit.~~ an applicant within the meaning of G.S. 159G-3(2).

(2) The applicant has the financial capacity to pay the principal of and the interest on its proposed obligations and loans.

(3) The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations and ordinances, federal, State and local.

(4) The applicant has agreed by official resolution to adopt and place into effect on or before completion of the project a schedule of fees, charges, and other available funds, including but not limited to the funds described in G.S. 159G-13(b), that will adequately provide for proper operation, maintenance, and administration of the project and for repayment of all principal of and interest on loans."

Section 6. G.S. 159G-13 reads as rewritten:

"**§ 159G-13. Revolving loans and grants.**

(a) To be eligible to receive a revolving loan or grant pursuant to this Chapter, an applicant shall have funds available or have a commitment for funding to cover project costs that exceed the grant or loan for which the applicant has applied. An applicant may apply for a revolving loan or grant prior to obtaining a commitment for additional funding. To be eligible to receive the revolving loans and grants provided for in this Chapter, local government units shall arrange to borrow the amounts necessary to be borrowed in connection therewith pursuant to the Local Government Finance Act or as provided in this Chapter as applicable. ~~Local government units may apply for the revolving loans and grants prior to arranging for such borrowing.~~

(b) Revenues received by municipalities from sales and use taxes levied under Articles 40, 41, and 42 of Chapter 105 of the General Statutes which are restricted in use for water and sewage capital outlay, and retirement of indebtedness for those

purposes, may be used for periodic payments on revolving loans made under this Article."

Section 7. G.S. 159G-14 reads as rewritten:

"**§ 159G-14. Inspection.**

Inspection of a project for which a revolving loan or grant has been made under this Chapter may be performed by qualified personnel of the Division of Environmental Health or the Environmental Management Commission or may be performed by qualified professional engineers, registered in this State, who have been approved by the Division of Environmental Health or the Environmental Management Commission; but no person shall be approved to perform inspections who is an officer or employee of the ~~unit of government~~ applicant to which the revolving loan or grant was made or who is an owner, officer, employee or agent of a contractor or subcontractor engaged in the construction of the project for which the revolving loan or grant was made. For the purpose of payment of inspection fees, inspection services shall be included in the term "construction cost" as used in this Chapter."

Section 8. G.S. 159G-15(b) reads as rewritten:

"(b) A copy of its rules adopted to implement the provisions of this Chapter shall be furnished free of charge by the receiving agency and the Department of Environment and Natural Resources to any ~~local government unit.~~ applicant."

Section 9. G.S. 159G-18 reads as rewritten:

"**§ 159G-18. ~~Local government~~ Applicant borrowing authority.**

(a) ~~Local government units~~ Applicants may execute debt instruments payable to the State in order to obtain revolving loans provided for in this Chapter. ~~Local government units~~ Applicants shall pledge as security for such obligations the user fee revenues derived from operation of the benefited facilities or systems only, or other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of ~~such~~ applicants that are local government units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use by applicants that are local government units, ~~under this Chapter.~~ The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments by applicants that are local government units to the State without any public bidding therefor. The State Treasurer, with the assistance of the Utilities Commission, shall develop and adopt appropriate debt instruments for use by applicants that are privately owned community water systems. The Utilities Commission shall develop and adopt appropriate procedures for the delivery of debt instruments by applicants that are privately owned community water systems to the State.

(b) The Local Government Commission shall review and approve proposed loans to applicants that are local government units under this Chapter under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. An applicant that is a

privately owned community water system must obtain approval of its application for a revolving loan or grant from the Utilities Commission in order to be eligible to receive the revolving loan or grant. Revolving loans under this Chapter shall be outstanding debt of applicants that are local government units for the purpose of Article 10, Chapter 159 of the General Statutes."

Section 10. Article 2 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-73.1. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.**

(a) When the boundaries of a sanitary district that (i) is located entirely within one county, (ii) has no outstanding indebtedness, (iii) at the time of its creation was not located entirely within or coterminous with the corporate limits of a city or town, (iv) has not provided any water or sewer service for at least five years, (v) did not levy any ad valorem tax in the current year, (vi) has been for at least five years entirely located within or coterminous with the corporate limits of a city or town, and (vii) at the time of the annexation of the area of the district by that city or town, the city or town assumed all assets and liabilities of the district, the board of that district by unanimous vote may petition the board of commissioners of the county in which the district is located to dissolve the district. Upon receipt of the petition, the board of commissioners shall notify the Department and the governing body of the city or town within which the district lies of the receipt of the petition. If the Commission, the county board of commissioners, and the governing body of the city or town shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. All taxes levied by the sanitary district that were levied prior to, but that are collected after, the dissolution shall vest in the city or town. All property held, owned, controlled, or used by the sanitary district upon the dissolution or that may later be vested in the sanitary district, and all judgments, liens, rights, and causes of actions in favor of the sanitary district shall vest in the city or town. At the dissolution, taxes owed to the sanitary district shall be collected by the city or town.

(b) The procedure for the dissolution of a sanitary district set out in this section is an alternative to the procedure set out in G.S. 130A-73 and any sanitary district to which both that section and this section apply may be dissolved under either section."

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

EXPLANATION OF SENATE BILL 138 (Third Ed):
Pvt. H20 Sys. Loan/Dissolve Sanitary District

TO: House Finance Committee
FROM: Jeff Hudson and Martha Walston, Staff Attorneys
DATE: July 20, 1998
SPONSOR: Senator Odom

Senate Bill 138 was recommended to the 1997 Regular Session by the Environmental Review Commission. The companion bill, House Bill 189, was introduced by Representative Arlie Culp. These bills, as introduced, amended the North Carolina Drinking Water Act so that it conforms to federal law. The conforming changes became law with the enactment of House Bill 189 during the 1997 Regular Session. **The House Committee Substitute for Senate Bill 138 removes the original provisions of the Bill, allows certain privately owned community water systems to apply for loans and grants from the Drinking Water Treatment Revolving Loan Fund, and provides for an alternative procedure for dissolution of certain sanitary districts. This Committee Substitute was given a favorable report by the House Environment Committee on July 15, 1998. The Bill was corrected on July 17, 1998 because the language "A BILL TO BE ENTITLED" was omitted.**

Sections 1 - 9: Allow certain privately owned community water systems to apply for loans and grants from the Drinking Water Treatment Revolving Loan Fund.

Section 1.1 amends the definition of "applicant" for purposes of the Drinking Water Treatment Revolving Loan Fund to include a privately owned community water system, as defined in G.S. 130A-313, that operates as a public utility as defined in G.S. 62-3, and that obtained a certificate of convenience and necessity under G.S. 62-110.

- Under G.S. 130A-313, a "community water system" is a system of constructed conveyances that provides water for human consumption to 15 or more service connections or at least 25 year-round residents.
- Under G.S. 62-3, "public utility" includes a person organized under the laws of any state or country owning or operating in this State equipment or facilities for diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.
- G.S. 62-110 requires a public utility to obtain a certificate of convenience and necessity from the Utilities Commission prior to construction, operation, or acquisition of any public utility plant or system. Persons obtaining a certificate of convenience and necessity from the Utilities Commission are subject to regulation by the Commission.

Sections 1.2 - 2 make conforming changes.

Section 3 requires that funds in the Drinking Water Treatment Revolving Loan Fund distributed to an applicant that is a privately owned community water system be used only for projects that benefit a local government unit and that are consistent with local water supply plans.

Sections 4 and 5 make conforming changes.

Section 6 requires applicants to have funds available or a commitment for funding to cover project costs that exceed the applied for grant or loan.

Sections 7 and 8 make conforming change.

Section 9 directs the State Treasurer, with the help of the Utilities Commission, to develop appropriate debt instruments for applicants that are privately owned community water systems. It also directs the Commission to develop procedures for the delivery of debt instruments by applicants that are privately owned community water systems. Section 9 also requires that these applicants obtain the approval of the Commission in order to be eligible to receive a revolving loan or grant. Section 9 makes conforming changes.

Section 10: Allows an alternative procedure for dissolution of certain sanitary districts.

Section 10 establishes an alternative procedure for the dissolution of certain sanitary districts. The board of a sanitary district, by unanimous vote, may petition the board of commissioners of the county in which the district is located to dissolve the district when the district:

- Is located entirely within one county
- Has no outstanding indebtedness
- At the time of its creation, was not located entirely within or coterminous with the corporate limits of a city or town
- Has not provided any water or sewer service for at least five years
- Did not levy any property tax in the current year
- Has been entirely located within or coterminous with the corporate limits of a city or town for at least five years
- At the time of annexation of the area of the district by that city or town, the city or town assumed all assets and liabilities of the district

Upon receipt of a petition, the board of commissioners must notify the Department of Health and Human Services and the governing body of the city or town where the petitioning district lies. If the Commission for Health Services (Commission), the county board of commissioners, and the governing body of the city or town agree to the petition, the Commission will dissolve the district. Matters related to the sanitary district's collection of taxes, property, and causes of action will pass to the city or town. This dissolution procedure is an alternative to that established in G.S. 130A-73. Any sanitary district to which both sections apply may be dissolved under either section.

Section 11 makes the act effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB138 (Proposed Committee Substitute - PCS6855-RT/SB-002)

SHORT TITLE: Private Water Systems Loan/Dissolve Sanitary District

SPONSOR(S):

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY2001-02	FY 2002-03
Drinking Water Treatment Revolving Loan Fund				**No Fiscal Impact**	
Dissolution of Sanitary Districts				**See Assumptions and Methodology**	

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of State Treasurer, Utilities Commission, the Division of Environmental Health in the Department of Environmental and Natural Resources, the Commission for Health Services and the Department of Health and Human Resources

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY: The first edition of Senate Bill 138, introduced by Senator Fountain Odom during the 1997 Regular Session, amended the North Carolina Drinking Water Act to conform with federal law. The House companion bill (HB 189) made identical changes to North Carolina Drinking Water Act and those conforming changes became law with enactment of House Bill 189 during the 1997 Regular Session. [1]

The proposed House committee substitute (PCS) for Senate Bill 138 makes the following principal changes to the first edition:

1. removes the original provisions of the bill;
2. amends the definition of "applicant" to the Drinking Water Treatment Revolving Loan Fund to include certain privately owned community water systems thereby allowing those systems to be eligible to apply for revolving loans and grants from the Drinking Water Treatment Revolving Loan Fund; and,
3. provides an alternative procedure for the dissolution of sanitary districts that have no indebtedness and which are located within or are coterminous with corporate limits of the city or town.

[1] Memo to House Committee on Environment dated July 15, 1998 from Jeff Hudson, Committee Counsel.

ASSUMPTIONS AND METHODOLOGY: The principal changes to the Drinking Water Treatment Revolving Loan Fund and to the procedures for the dissolution of a sanitary district should not cause an increase in costs to the departments affected or have a fiscal impact on the state General Fund.

Drinking Water Treatment Revolving Loan Fund

As part of the 1996 amendments to the federal Safe Drinking Water Act, Congress established and authorized a Drinking Water State Revolving Fund Program to provide loans for public water supply infrastructure improvements and expenditures associated with drinking water regulations and compliance. The state is required to provide a 20 percent match to receive assistance through this program. Federal funds received by the state are credited to the Drinking Water Treatment Revolving Loan Fund (the Fund) and are administered by the Division of Environmental Health in the Department of Environment and Natural Resources.

The effect of allowing privately owned community water systems to apply to the Fund is a potential increase in the number of applicants. According to the Utilities Commission there are approximately 1,500 privately owned community water systems in North Carolina owned by 225 different companies which are potential new applicants. However, an increase in applicants will have no fiscal impact on the Fund since the amount of funds to be distributed is determined by the amount of federal funds appropriated to the state irrespective of the number applicants eligible to apply.

The principal departments affected by this change to the Drinking Water Treatment Revolving Loan Fund are the Division of Environmental Health, the Office of State Treasurer and the Utilities Commission. Under existing law, the Division of Environmental Health reviews the applications to the revolving loan fund on technical merit. The Division anticipates that any increase in workload caused by reviewing additional applications can be absorbed by existing staff. Therefore, there is no fiscal impact on the state General Fund. Furthermore, the Division expects that number of new applicants will be limited due to the restrictions placed on the use of the funds by privately owned water systems. These restrictions include that funds be used only for projects that benefit a local government and which are consistent with an approved water supply plan.

After the applications are ranked on technical merit, current law directs the Local Government Commission to review applications submitted by local government units for financial risk. This PCS directs the State Treasurer, with assistance from the Utilities Commission, to develop and adopt similar debt instruments for use by applicants that are privately owned community water systems. Furthermore, the PCS directs the Utilities Commission to develop appropriate procedures for the delivery of these debt instruments. Finally, the Utilities Commission must approve privately owned community water systems' applications before those systems are eligible to receive funds. Neither the Office of State Treasurer nor the Utilities Commission anticipate that these activities will cause a substantial increase in their respective workloads. Consequently, there is no fiscal impact on either of these agencies as a result of this legislation.

Dissolution of Sanitary Districts

The addition of an alternative procedure for dissolution of a sanitary district should have no fiscal impact at the state level for the two departments affected by the change, specifically the Commission for Health Services and the Department of Health and Human Resources. Under existing law, 51 percent or more of the "resident freeholders" within a sanitary district may petition the board of county commissioners to dissolve the district. The alternative procedure provided for in this PCS would allow the board of the sanitary district, by unanimous vote, to petition the board of county commissioners in which the district is located to dissolve the district provided that the sanitary district meets the following conditions:

1) is located within a single county;
2) has no outstanding indebtedness;
3) was not located entirely within or coterminous with the corporate limits of a municipality when initially created;
4) has not provided water or sewer service for at least five years;
5) has not levied any ad valorem tax in the current year;
6) has been for at least five years located entirely within or coterminous with the corporate limits of a municipality; and,
7) has been annexed by and is located entirely within the corporate limits of a municipality that assumed all the assets and liabilities of the district.

The county commissioners must then notify both the governing body of the city or town and the Department of Health and Human Resources of the proposed dissolution. If the Commission for Health Services, the county board of commissioners and the municipality agree to the petition, the Commission will dissolve the district. Matters related to the sanitary district's collection of taxes, property and causes of action will pass to the city or town.[2] The net effect of the dissolution is the transfer of these matters from the sanitary district to the municipality.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Jennifer Hoffmann
APPROVED BY:

DATE: July 20, 1998

[2] Memo to House Committee on Environment dated July 15, 1998 from Jeff Hudson, Committee Counsel.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 4

SENATE BILL 245
Finance Committee Substitute Adopted 4/22/97
Third Edition Engrossed 4/28/97
House Committee Substitute Favorable 7/1/98

Short Title: Sewer/Sanitary District Financing. (Public)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE METROPOLITAN SEWERAGE DISTRICTS AND CERTAIN SANITARY DISTRICTS TO USE INSTALLMENT PURCHASE FINANCING TO THE SAME EXTENT AS OTHER UNITS OF LOCAL GOVERNMENT AND TO REMOVE THE POPULATION REQUIREMENT FOR LOCAL SCHOOL ADMINISTRATIVE UNITS TO USE INSTALLMENT PURCHASE FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) reads as rewritten:

"(h) As used in this section, the term 'unit of local government' means any of the following:

(1) A county.

(2) A city.

(3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

(3a) A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.

(3b) A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

(4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent

federal decennial census and (ii) an area of less than 200 square miles.

(5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.

(5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995; provided that the authority granted by this section may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.

(6) A local school administrative unit ~~(i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and (ii)~~ whose board of education is authorized to levy a school tax.

(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.

(8) A consolidated city-county, as defined by G.S. 160B-2(1)."

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

EXPLANATION OF SENATE BILL 245:
Sewer/Sanitary District Financing (4th Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 20, 1998
SPONSOR: Senator Ledbetter

Senate Bill 245 adds three types of local governmental units to the list of local governmental units that can use installment purchase financing under G.S. 160A-20: metropolitan sewerage districts, sanitary districts, and the Roanoke Rapids School Board. The bill is effective upon ratification.

Under current law, a water and sewer authority and the Mooresville School Board have the authority to use installment purchase financing under G.S. 160A-20. That statute authorizes a listed unit to finance the purchase of real or personal property by an installment contract that pledges the asset financed as security. If the unit defaults on the loan, the sole recourse is to repossess or foreclose the pledged asset. Many financings under this statute are accomplished with certificates of participation. All financings under the statute that involve real property must be approved by the Local Government Commission. All financings that involve personal property must be approved by the Local Government Commission if they are for at least five years and for at least $500,000 or 1/10th of 1% of the assessed value of property in the district.

Metropolitan sewerage districts are created by resolution of the Environmental Management Commission after a public hearing and after a request from the local units affected. A sewerage district is governed by a board appointed by the governing bodies of the local units whose area is included in the district. The district can issue general obligation bonds and revenue bonds, levy property taxes in the district, and set and collect fees for sewerage service. There are few of these districts in the State. The most active one is in Buncombe County.

Sanitary districts are created by resolution of the Health Services Commission after a public hearing and after a petition of at least 51% of the property owners in the proposed district. A sanitary district is governed by a board elected by the residents of the district. Like a sewerage district, a sanitary district can issue general obligation bonds and revenue bonds, levy property taxes in the district, and set and collect fees for services. Sanitary districts can

provide a broad range of services, such as water, sewer, fire protection, garbage disposal, and rescue services.

The only two school boards that have the independent authority to levy a school tax are Mooresville and Roanoke Rapids. Under G.S. 160A-20, a local school administrative unit that is located in a county that has a population over 90,000 and whose board of education is authorized to levy a school tax may use installment financing. The bill expands this authorization to include Roanoke Rapids by deleting the population figures. There is no longer a need to use the population figure since its purpose was to limit the financing authority granted by the statute to the Mooresville school unit.

Through the many school acquisition bills the General Assembly has enacted, more than 50 counties have received authorization from the General Assembly to purchase property and build and renovate buildings for the school administrative units in those counties. The effect of these bills is to not only allow certain installment financing to be used for public school construction or renovation, but also to allow a refund of sales and use taxes paid on the school construction project. This bill will accomplish the first purpose for the Roanoke Rapids school board. It will not accomplish the second. A local school administrative unit can not receive a refund of sales and use taxes because it is not one of the governmental entities that are allowed refunds under G.S. 105-164.14(c). However, the Senate and the House Finance Committee have passed Senate Bill 77, which will allow sales and use tax refunds to all school administrative units.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 245
SHORT TITLE: Sewer/Sanitary District Financing
SPONSOR(S): Senator Ledbetter

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	(SEE "ASSUMPTIONS AND METHODOLOGY")				

EFFECTIVE DATE: Upon becoming law.

BILL SUMMARY: G.S. 160A-20(h) allows counties, cities and specifically named local authorities to use installment financing for capital projects. The bill adds metropolitan sewer districts and sanitary districts to the list. The bill also removes the population requirement for school systems with independent taxing authority, to use installment purchase financing. Current law requires a county population of 90,000 of more, in addition to independent taxing authority, before the county's schools can use installment purchase financing.

ASSUMPTIONS AND METHODOLOGY: Under G.S. 160A-20, units of local government have the ability to finance the purchase of property through installment contracts. The term "local unit of government," as defined in subpart (h), currently includes counties, cities, water and sewer authorities, certain airport authorities, area mental health and substance abuse authorities, and certain school districts with independent taxing authority. The bill adds metropolitan sewer districts and sanitary districts to the list. There is no direct impact on state or local revenues from these additions because the bill only gives them an additional financing tool.

Currently only two school boards have the independent authority to levy a school tax - Mooresville and Roanoke Rapids. Of these, only Mooresville meets the population requirement. As such, the only school system in the state that can use installment financing is Mooresville. By removing the population requirement, the bill effectively extends that privilege to Roanoke Rapids schools. There is no direct impact on state or local revenues from this change.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts and Linda Struyk Millsaps
APPROVED BY:

DATE: July 19, 1998

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

House ☒ Committee Substitute for

S.B. 245 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE METROPOLITAN SEWERAGE DISTRICTS AND CERTAIN SANITARY DISTRICTS TO USE INSTALLMENT PURCHASE FINANCING TO THE SAME EXTENT AS OTHER UNITS OF LOCAL GOVERNMENT AND TO REMOVE THE POPULATION REQUIREMENT FOR LOCAL SCHOOL ADMINISTRATIVE UNITS TO USE INSTALLMENT PURCHASE FINANCING.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1001
Finance Committee Substitute Adopted 7/10/97
Corrected Copy 7/14/97
Proposed House Committee Substitute S1001-PCS3642-LA001

Short Title: Expand Amusement Tax Exemption. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN AMUSEMENTS TAX EXEMPTION FOR CERTAIN NONPROFIT ARTS ORGANIZATIONS AND COMMUNITY FESTIVALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-37.1(a) reads as rewritten:

"(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving, offering or managing any form of entertainment or amusement not otherwise taxed or specifically exempted in this Article, for which an admission is charged, shall pay an annual license tax of fifty dollars ($50.00) for each room, hall, tent or other place where ~~such~~ the admission charges are made.

In addition to the license tax levied above, ~~such person, firm, or corporation~~ the taxpayer shall pay an additional tax upon the gross receipts of ~~such~~ the business at the rate of three percent (3%). Reports shall be made to the Secretary ~~of Revenue, in such form as he may prescribe,~~ within the first 10 days of each month covering all ~~such~~ taxable gross receipts for the previous month, and the ~~additional tax herein levied~~ gross receipts tax shall be paid monthly at the time ~~such~~ the reports are made. The annual license tax ~~herein levied~~ shall be treated as an advance payment of the ~~tax upon gross receipts herein levied, and the annual license tax~~ gross receipts tax and shall be applied as a credit upon or advance payment of the gross receipts tax.

Every ~~person, firm, or corporation~~ person giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic

contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay an annual license tax of fifty dollars ($50.00) for each location where ~~such~~ the charges are made, and, in addition, a tax upon the gross receipts derived from admission charges at the rate of three percent (3%). The additional tax upon gross receipts shall be levied and collected in accordance with ~~such regulations as may be made by the Secretary of Revenue.~~ rules adopted by the Secretary. No tax shall be levied on admission fees for high school and elementary school contests.

Dances and other amusements actually promoted and managed by civic organizations and private and public secondary ~~schools,~~ schools shall not be subject to the license tax imposed by this section and the first one thousand dollars ($1,000) of gross receipts derived from ~~such~~ these events shall be exempt from the gross receipts tax ~~herein levied~~ when the entire proceeds of ~~such~~ the dances or other amusements are used exclusively for the school or civic and charitable purposes of ~~such~~ the organizations and not to defray the expenses of the organization conducting ~~such~~ the dance or amusement. The mere sponsorship of dance or other amusement by such a school, civic, or fraternal organization ~~shall not be deemed to exempt such~~ does not exempt the dance or other amusement as provided in this paragraph, but the exemption shall apply only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization and the proceeds are used as ~~herein before required.~~ required by this paragraph.

Dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts are exempt from the license tax and the gross receipts tax imposed under this section if the dance or other amusement is held at the center. 'Qualifying corporation' means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). 'Center for the performing and visual arts' means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms and similar accommodations to organized arts groups and individual artists. This exemption shall not apply to athletic events.

The license and gross receipts taxes imposed by this section do not apply to a ~~person, firm, or corporation~~ person that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A 'teen center' is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.

The license and gross receipts taxes imposed by this section do not apply to arts festivals held by a person that is exempt from income tax under Article 4 of this Chapter and that meets the following conditions:

(1) The person holds no more than two arts festivals during a calendar year.

(2) Each of the person's arts festivals lasts no more than seven days.

(3) The arts festivals are held outdoors on public property and involve a variety of exhibitions, entertainments, and activities.

The license and gross receipts taxes imposed by this section do not apply to community festivals held by a person that is exempt from income tax under Article 4 of this Chapter and that meets all of the following conditions:

(1) The person holds no more than one community festival during a calendar year.
(2) The community festival lasts no more than seven days.
(3) The community festival involves a variety of exhibitions, walking tours, entertainments, and activities, the majority of which are held outdoors and are open to the public."

Section 2. G.S. 105-40, as amended by Senate Bill 1252, 1997 General Assembly, An Act To Simplify And Modify Privilege License And Excise Taxes And Related Permit Fees, is further amended by adding two new subdivisions to read:

"(10) Arts festivals held by a person that is exempt from income tax under Article 4 of this Chapter and that meets the following conditions:
a. The person holds no more than two arts festivals during a calendar year.
b. Each of the person's arts festivals last no more than seven days.
c. The arts festivals are held outdoors on public property and involve a variety of exhibitions, entertainments, and activities.

(11) Community festivals held by a person who is exempt from income tax under Article 4 of this Chapter and that meets all of the following conditions:
a. The person holds no more than one community festival during a calendar year.
b. The community festival lasts no more than seven days.
c. The community festival involves a variety of exhibitions, walking tours, entertainments, and activities, the majority of which are held outdoors and are open to the public."

Section 3. Section 1 of this act is effective when it becomes law. Section 1 of this act is repealed effective July 1, 1999, only if Senate Bill 1252, An Act To Simplify And Modify Privilege And Excise Taxes And Related Permit Fees, is enacted by the 1997 General Assembly. Section 2 of this act becomes effective July 1, 1999, if Senate Bill 1252, An Act To Simplify And Modify Privilege License And Excise Taxes And Related Permit Fees, is enacted by the 1997 General Assembly.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 1001
Finance Committee Substitute Adopted 7/10/97
Corrected Copy 7/14/97

Short Title: Expand Amusement Tax Exemption. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN AMUSEMENTS TAX EXEMPTION FOR CERTAIN NONPROFIT ARTS ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-37.1(a) reads as rewritten:

"(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving, offering or managing any form of entertainment or amusement not otherwise taxed or specifically exempted in this Article, for which an admission is charged, shall pay an annual license tax of fifty dollars ($50.00) for each room, hall, tent or other place where ~~such~~ the admission charges are made.

In addition to the license tax levied above, ~~such person, firm, or corporation~~ the taxpayer shall pay an additional tax upon the gross receipts of ~~such~~ the business at the rate of three percent (3%). Reports shall be made to the Secretary ~~of Revenue, in such form as he may prescribe,~~ within the first 10 days of each month covering all ~~such~~ taxable gross receipts for the previous month, and the ~~additional tax herein levied~~ gross receipts tax shall be paid monthly at the time ~~such~~ the reports are made. The annual license tax ~~herein levied~~ shall be treated as an advance payment of the ~~tax upon gross receipts herein levied, and the annual license tax~~ gross receipts tax and shall be applied as a credit upon or advance payment of the gross receipts tax.

Every ~~person, firm, or corporation~~ person giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay

an annual license tax of fifty dollars ($50.00) for each location where ~~such~~ the charges are made, and, in addition, a tax upon the gross receipts derived from admission charges at the rate of three percent (3%). The additional tax upon gross receipts shall be levied and collected in accordance with ~~such regulations as may be made by the Secretary of Revenue.~~ rules adopted by the Secretary. No tax shall be levied on admission fees for high school and elementary school contests.

Dances and other amusements actually promoted and managed by civic organizations and private and public secondary ~~schools,~~ schools shall not be subject to the license tax imposed by this section and the first one thousand dollars ($1,000) of gross receipts derived from ~~such~~ these events shall be exempt from the gross receipts tax ~~herein levied~~ when the entire proceeds of ~~such~~ the dances or other amusements are used exclusively for the school or civic and charitable purposes of ~~such~~ the organizations and not to defray the expenses of the organization conducting ~~such~~ the dance or amusement. The mere sponsorship of dance or other amusement by such a school, civic, or fraternal organization ~~shall not be deemed to exempt such~~ does not exempt the dance or other amusement as provided in this paragraph, but the exemption shall apply only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization and the proceeds are used as ~~herein before required.~~ required by this paragraph.

Dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts are exempt from the license tax and the gross receipts tax imposed under this section if the dance or other amusement is held at the center. 'Qualifying corporation' means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). 'Center for the performing and visual arts' means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms and similar accommodations to organized arts groups and individual artists. This exemption shall not apply to athletic events.

The license and gross receipts taxes imposed by this section do not apply to a ~~person, firm, or corporation~~ person that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A 'teen center' is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.

The license and gross receipts taxes imposed by this section do not apply to arts festivals held by a nonprofit arts organization that meets the following conditions:

(1) It holds no more than two arts festivals during a calendar year.

(2) Each of its arts festivals lasts no more than seven days.

(3) Its arts festivals are held outdoors on public property and involve a variety of exhibitions, entertainments, and activities."

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

EXPLANATION OF SENATE BILL 1001 (PCS):
Expand Amusement Tax Exemption

TO: House Finance Committee
FROM: Martha H. Harris and Martha K. Walston, Staff Attorneys
DATE: July 20, 1998
SPONSOR: Senator Kinnaird

The proposed House committee substitute for Senate Bill 1001 creates two new exemptions from the privilege license tax on various forms of amusements and entertainments. Senate Bill 1001, as passed by the Senate, made clarifying changes to G.S. 105-37.1 and exempted a nonprofit arts organization's arts festivals if the organization met all of the following conditions:

(1) It held no more than two festivals a year.
(2) Each of the festivals lasted no more than seven days.
(3) The arts festivals were held outdoors on public property, and involved a variety of exhibitions, entertainments, and activities.

Section 1 of the House proposed committee substitute also contains the clarifying changes to G.S. 105-37.1 and the exemption of certain arts festivals from the privilege license tax. The proposed committee substitute exempts arts festivals held by a person that is exempt from the State income tax and that meets the above conditions. Section 1 of the proposed committee substitute also adds to the statute the exemption from the privilege license tax set out in Senate Bill 1450, introduced by Senator Ballentine. Senate Bill 1450 exempts from the privilege license tax community festivals held by a person who is exempt from State income tax and who meets all of the following conditions:

(1) The person holds no more than one community festival a year.
(2) The festival lasts no more than 7 days.
(3) The festival involves a variety of exhibitions, walking tours, entertainments, and activities, the majority of which are held outdoors and are open to the public.

Section 2 of the proposed committee substitute amends Senate Bill 1252, AN ACT TO SIMPLIFY AND MODIFY PRIVILEGE LICENSE AND EXCISE TAXES AND RELATED PERMIT FEES, so that the tax exemptions for community festivals and arts festivals would be added to the list of exemptions from the 3% gross receipts tax on amusements, if SB 1252 is enacted.

Section 1 of the act is effective when it becomes law. Section 1 is repealed effective July 1, 1999, if Senate Bill 1252 is enacted. Section 2 of the act becomes effective only if Senate Bill 1252 is enacted.

Current Law

The State levies a 3% gross receipts tax on anyone engaged in the business of offering amusements, athletic events, dances, and entertainments for which an admission is charged. Under current law, exemptions from the tax are narrowly drawn:

- Elementary and secondary athletic contests
- The first $1,000 of receipts from fund-raising dances actually managed by the civic group or school raising funds
- Fund-raising entertainments produced exclusively by volunteer local talent
- Entertainments (but not athletic events) offered at and by a nonprofit arts center
- Nonprofit teen centers
- Entertainments on the Cherokee Indian reservation when the person giving, offering, or managing the entertainment is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council.

Senate Bill 1252 is a recommendation of the Revenue Laws Study Committee and was introduced in the 1997 Regular Session. The version of the Bill, as passed by the Senate, exempts all elementary and secondary school dances and other amusements. Current law only exempts the first $1,000 of gross receipts derived from dances and amusements actually promoted and managed by secondary schools when the proceeds are used exclusively for the school and not to defray expenses. The Senate version also includes within the list of exemptions those amusements that are listed as exempt in other sections of the General Statutes (the North Carolina Symphony Society and amusements organized under the Agriculture Chapter), and outdoor historical dramas that are described in Chapter 143 and that have generally been exempt under the current definition for exemptions in G.S. 105-40. The House added all motion picture shows to the list of amusements exempt from the 3% gross receipts tax on amusements.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1001 (House Finance Committee Substitute)

SHORT TITLE: Expand Amusement Tax Exemption

SPONSOR(S): Senator Kinnaird, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	**Revenue loss less than $25,000 each fiscal year**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue - Corporate, Excise and Insurance Tax Div.

EFFECTIVE DATE: The exemption is effective when the act becomes law.

BILL SUMMARY: This act repeals the $50 license and 3% gross receipts tax on arts festivals and community festivals that meet certain criteria. To be exempt from tax, arts festivals must be held outdoors on public property, involve a variety of exhibitions, entertainments and activities, last no more than seven days, and be held no more than twice a year. Exempt community festivals must be held only once a year, last no more than seven days, and involve a variety of exhibitions, walking tours, entertainments, and activities that are held mostly outdoors and are open to the public.

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue reviewed all arts and community festivals that paid gross receipts taxes in FY 1997-98. The Department collected $21,225 in revenue from New Years' Eve festivals and product/crop festivals in FY 1997-98. The Department estimates the General Fund revenue loss to be less than $25,000 each fiscal year.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: July 20, 1998

RJ Jones

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1001 A BILL TO BE ENTITLED AN ACT TO PROVIDE AN AMUSEMENTS TAX EXPEMPTION FOR CERTAIN NONPROFIT ARTS ORGANIZATIONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

House Finance — July 21, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Paul Wilms	NCMBA
Jessica Miles	NC DEH Public Water Supply
Michael Lowder	Artsplosnre, 336 Fayetteville St Mall Ste 405
Suzanne Williams	NCCCS
Becky Street	Parker, Poe Adams + Bernstein
Alice Garland	Electricities
Larry L. Hefflt	NC UC
Ronald Brown	NCUC
Linda Sewell	DEH / DENR
Sid Harrell	DENR/DEH/Public Water Supply Sect.
Jay Hare	DOR
Billy Lamb	DOR

VISITOR REGISTRATION SHEET

Horse Pasture — 7/21/98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Carl Ligon	OSBM
Heather Gail	OSA
Natalie Haskins	Charlotte Chamber
Jim Blackburn	Counties
Stuart Dixon	NCNG
C. Parker	Bone & Assoc.
Roger	NCDOT
Hal Miller	NCACCT
David S. Summers	ZDA, PA
Stacey Slaughter	Legislative Intern
Ben Nivens	Bentley & Dixon LLP
K McGuire	NC Center for NP

MINUTES

HOUSE COMMITTEE ON FINANCE

THURSDAY, JULY 16, 1998

8:30 A.M. ROOM 544-LOB

Chairman Brawley called the meeting to order and introduced the Pages.

HB-1502 UNC CAPITAL PROJECTS

Rep. Gray moved for adoption of the committee substitute for discussion. So moved. He then explained the bill. Rep. Brown moved for a favorable report, unfavorable to the original bill. Rep. Hackney asked what the difference in the original bill and the committee substitute was. Mr. Bostic explained. The vote was taken and passed.

HB-1354 IMPROVE TORRENS LAW

Rep. Brawley explained this came to our committee as a committee substitute from the JII committee. Rep. Hackney spoke in favor and moved for a favorable report. Rep. Ramsey had questions which Rep. Brawley explained. Rep. Goodwin spoke in favor of the bill. Rep. Hightower asked Rep. Goodwin questions to which he and Rep. Hackney responded to. The vote was taken and given a favorable report.

HB-1489 LOCAL TAX INFORMATION/REFUND

Rep. Neely moved for adoption of the proposed committee substitute for discussion. So moved. He then explained the bill. Rep. Cole asked if this applied to all transit authorities and Rep. Neely responded. Rep. Brawley moved for a favorable report, unfavorable to the original bill. The vote was taken and passed.

SB-649 LOBBYIST PENALTY

Rep. Luebke moved for adoption of the proposed committee substitute for discussion. So moved. Sen. Miller reminded members that this was returning from a sub-sub-committee from three weeks ago then he explained it. Rep. Decker asked if the Secretary of States office would notify lobbyist of late fees. Mr. Scott Templeton, Secretary of States office, responded they would. Rep. Boyd-McIntrye spoke in favor and moved for a favorable report to the House

Committee Substitute, unfavorable to the original bill. The vote was taken and passed.

HB-1492 CLEAN WATER/NATURAL GAS BONDS

This was removed from the agenda at the request of the sponsor due to an appropriations meeting conflict.

The meeting adjourned at 9:05 a.m.

Robert Brawley
Rep. Brawley, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

THURSDAY, JULY 16, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

BILLS FOR DISCUSSION:

HB-1354	Improve Torrens Law	Rep. Brawley
HB-1489	Local Tax Information/Refunds	Rep. Neely
HB-1502	UNC Capital Projects	Rep. Gray
HB-1492	Clean Water/Natural Gas Bonds	Rep. Carpenter
SB-649	Lobbyist Penalty	Sen. Miller

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1502*
Proposed Committee Substitute H1502-PCS1595-RB

Short Title: UNC Nonappropriated Cap. Projects. (Public)

Sponsors:

Referred to:

May 26, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is (i) to authorize the construction by certain constituent institutions of The University of North Carolina and the University of North Carolina General Administration, of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund.

Section 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, are as follows:

1. Appalachian State University	
Renovation of Welborn Cafeteria	$6,159,700
2. East Carolina University	
West End Dining Hall	7,410,300
3. North Carolina A & T State University	
Residence Hall Improvements	5,000,100

4. North Carolina State University	
Centennial Campus Buildings, Improvements for Tenants Use	2,862,600
5. The University of North Carolina at Chapel Hill	
Medical Biomolecular Research Building, Phase II	30,045,500
Renovations and Addition to the Frank Porter Graham Student Union	13,287,300
Addition to Beard Hall	8,414,200
Institute of Government Parking Deck	1,548,500
6. The University of North Carolina at Charlotte	
Addition to the Barnhardt Student Activity Center	5,772,800
7. The University of North Carolina at Wilmington	
Improvements to Athletic Facilities	4,481,600
8. Western Carolina University	
Work Force Development Center	7,499,800.

Section 3. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1502*

Short Title: UNC Nonappropriated Cap. Projects. (Public)

Sponsors: Representatives Gray; Goodwin and Sutton.

Referred to: Appropriations, if favorable, Finance.

May 26, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is (i) to authorize the construction by certain constituent institutions of The University of North Carolina and the University of North Carolina General Administration, of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund.

Section 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, are as follows:

1. Appalachian State University	
Renovation of Welborn Cafeteria	$6,159,700
2. East Carolina University	
West End Dining Hall	7,410,300
3. North Carolina A & T State University	
Residence Hall Improvements	5,000,100

4. North Carolina State University	
Centennial Campus Buildings, Improvements for Tenants Use	2,862,600
5. The University of North Carolina at Chapel Hill	
Medical Biomolecular Research Building, Phase II	30,045,500
Renovations and Addition to the Frank Porter Graham Student Union	13,287,300
Addition to Beard Hall	8,414,200
Institute of Government Parking Deck	1,548,500
6. The University of North Carolina at Charlotte	
Addition to the Barnhardt Student Activity Center	5,772,800
7. The University of North Carolina at Wilmington	
Improvements to Athletic Facilities	4,481,600
8. Western Carolina University	
Work Force Development Center	7,499,800.

Section 3. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations. In no event may appropriations from the General Fund be used for a project authorized by this act.

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

House Bill 1502: UNC Non-Appropriated Capital Project Authorizations

Campus	Project	Amount	Effect of Debt on Students	Increase in Operating Costs	Source of Operating Costs	Effect of Operations on Students
Appalachian State	Renovate Welborn Cafeteria	$6,159,700	none	none	Dining system receipts	none
East Carolina	West End Dining Hall	$7,410,300	none	$125,000	Dining system receipts-paid by food servicecontractor	none
NC A&T State	Residence Hall Improvements	$5,000,100	none	none	Dormitory rentals	none
NC State	Centennial Campus Buildings: Improvements for Tenants Use	$2,862,600	none	Unknown	Tenant rental payments	none
UNC-Chapel Hill	Medical Biomolecular Research Building: Phase II	$30,045,500	none	$1,859,600	General Fund appropriations	none
UNC-Chapel Hill	Renovation and Addition to Frank P. Graham Student Center	$13,287,300	$60 increase in debt service fee annually	$331,400	Student Activities Fee	$5 annual increase in fees
UNC-Chapel Hill	Addition to Beard Hall	$8,414,200	none	$154,300	General Fund appropriations	none
UNC-Chapel Hill	Parking Deck-Institute of Government	$1,548,500	none	$88,000	Parking receipts	none
UNC-Charlotte	Addition to Barnhardt Student Activity Center	$5,772,800	none	$52,500	Student fees	none anticipated
UNC-Wilmington	Improvements to Athletic Facilities	$4,481,600	none	$62,990	Non-state funds	none
Western Carolina	Work Force Development Center	$7,499,800	none	$378,000	General Fund appropriations	none
Total		$92,482,400		$3,051,790 $2,391,900 (General Fund)		

FRD 7/14/98 5:02 PM

Authorization of Self-Liquidating Capital Improvements Projects

It is recommended that the Board approve eleven self-liquidating capital improvements projects totaling $92,482,400 at eight institutions. The projects would then be forwarded to the General Assembly for authorization during the 1998 Session.

Appalachian State University

Renovation of Welborn Cafeteria, $6,159,700

The project would provide for the renovation of Welborn Cafeteria, the principal student dining facility on campus. The original facility was constructed in 1925 with additions completed in 1965 and 1988. The project proposes to renovate the 30,555 square feet in the original facility and to provide new heating, ventilating, cooling, plumbing, and electrical systems. The original facility contains the central kitchen and two main dining rooms which seat a total of 900 people. The project further provides for asbestos abatement, re-roofing, ADA improvements, and exterior renovations. The University proposes to finance the project through the sale of revenue bonds to be retired from dining system receipts.

East Carolina University

West End Dining Hall, $7,410,300

The project would provide for the construction of a 32,950 square foot dining hall with seating for 600 people. The facility would be located on the main academic campus near five university residence halls as well as a privately owned student condominium complex. The project would be financed through the sale of revenue bonds to be retired from dining receipts.

North Carolina A&T State University

Residence Hall Improvements, $5,000,100

The University has employed the firm of Hayes, Seay, Mattern & Mattern to conduct a study and make recommendations concerning improvements to campus residence halls. The firm has identified the need to invest in excess of $20 million in the housing system to perform all needed renovations. The University requests to proceed with improvements totaling $5,000,100 in eleven residence halls to address the most immediate needs including building code violations, life safety needs, roofing needs, sprinkler systems, electrical upgrades, and plumbing needs. The University proposes to finance the project through the sale of revenue bonds to be retired from housing system receipts.

North Carolina State University

Centennial Campus Buildings, Improvements for Tenants Use, $2,862,600

The project would provide for the design and construction of improvements to facilities on the Centennial Campus to meet specific needs of the tenants that occupy the facilities. The improvements would be financed through the sale of revenue bonds to be retired from rents charged to building occupants.

The University of North Carolina at Chapel Hill

Medical Biomolecular Research Building, Phase II, $30,045,500

Included in the *1997-99 Budget Request of the Board of Governors* is a request for $29,493,800 to provide funding for Phase I of the Medical Biomolecular Research Building. The General Assembly has previously appropriated $1,000,000 for planning this facility. The University now proposes to construct the second phase of the research facility at the same time as the first phase by adding three additional floors estimated to cost $30,045,500. The self-liquidating portion of the project would be financed through the sale of revenue bonds to be retired from overhead receipts.

Renovations and Addition to the Frank Porter Graham Student Union, $13,287,300

The Frank Porter Graham Student Union was completed in 1968 with an addition that was constructed in 1977. The project proposes to construct an addition of 36,120 square feet to provide space for student organizational offices, meeting rooms, and a variety of activity and service spaces. The existing 118,255 square foot building would be completely renovated. The project would be financed through the sale of revenue bonds to be retired from a new debt service fee of approximately $60.00.

Addition to Beard Hall, $8,414,200

The General Assembly has appropriated $9,824,600 to provide an addition to Beard Hall to accommodate growth in the School of Pharmacy. The University now proposes to expand the addition by 22,000 square feet to provide more classroom and laboratory space. The proposed project further provides approximately $1.5 million for additional fixed, movable, and audiovisual equipment. In addition, the cost estimate provides $1.5 million for the relocation of major steam and chilled water lines which must be moved before the addition can be constructed. The project would be financed through gifts to the University.

Institute of Government Parking Deck, $1,548,500

The project would provide for the construction of a 183-space, two-level parking deck on the west side of the Knapp Building. The deck is an integral part of the additions and renovations to the Knapp Building and is needed to provide adequate parking for students and visitors to the Institute of Government. The project would be financed through borrowing to be retired from parking system receipts.

The University of North Carolina at Charlotte

Addition to the Barnhardt Student Activity Center, $5,772,800

The project would provide for a 29,200 square foot addition to the north side of the Student Activity Center. The addition would contain weight training facilities, a practice basketball court, offices, and academic study hall space. The project would be financed from a combination of balances in institutional accounts and contributions.

The University of North Carolina at Wilmington

Improvements to Athletic Facilities, $4,481,600

The project would provide for improvements to several different athletic facilities throughout the UNC-Wilmington campus. First, the University proposes to construct a 10,000 square foot sports medicine complex with offices, conference rooms, classrooms, treatment facilities, and lockers/dressing rooms for six sports programs. Next, the University proposes to add 6,000 square feet and renovate 2,200 square feet in Nixon Annex, which houses the Director of Athletics. An addition of 1,500 square feet and the renovation of 2,200 square feet is proposed for use by the baseball program. In the softball stadium, the University proposes to construct two players' dugouts and a two-story press building. Within Green Track Stadium, the running track would be resurfaced and restrooms and locker rooms would be added. The University proposes to resurface the tennis courts and add bleachers, restrooms, and locker rooms. Within the soccer stadium, bleachers would be enclosed within a brick screen wall and restroom facilities would be added. The project further provides for air conditioning the natatorium. The project would be financed from private gifts.

Western Carolina University

Work Force Development Center, $7,499,800

The project would provide for the construction of a 31,400 square foot facility to be financed from Federal grants. The purpose of the Center is to contribute to a better-prepared, more highly skilled workforce for the mountain region of Western North Carolina by enhancing undergraduate and graduate education through the application of electronics technologies to the curricula. The Center will assist businesses in North Carolina, especially new, emerging, and small businesses in Western North Carolina, through training, credit and non-credit education, videoconferencing, and public-private partnerships for product or service development. The facility would contain classrooms, laboratories, computer rooms for 150 people, plastics and laser laboratories, television and radio studios, and a robotics research laboratory.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1502*
Proposed Committee Substitute H1502-PCS1595-RB

Short Title: UNC Nonappropriated Cap. Projects. (Public)

Sponsors:

Referred to:

May 26, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is (i) to authorize the construction by certain constituent institutions of The University of North Carolina and the University of North Carolina General Administration, of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund.

Section 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, are as follows:

1. Appalachian State University	
Renovation of Welborn Cafeteria	$6,159,700
2. East Carolina University	
West End Dining Hall	7,410,300
3. North Carolina A & T State University	
Residence Hall Improvements	5,000,100

4. North Carolina State University	
Centennial Campus Buildings, Improvements for Tenants Use	2,862,600
5. The University of North Carolina at Chapel Hill	
Medical Biomolecular Research Building, Phase II	30,045,500
Renovations and Addition to the Frank Porter Graham Student Union	13,287,300
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Addition to the Barnhardt Student Activity Center	5,772,800
7. The University of North Carolina at Wilmington	
Improvements to Athletic Facilities	4,481,600
8. Western Carolina University	
Work Force Development Center	7,499,800.

Section 3. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
H.B. 1502 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill (# 1), ☑ which changes the title, unfavorable as to original bill ~~(Committee Substitute Bill #); (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
H.B. 1502 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill (# 1), ☑ which changes the title, unfavorable as to original bill ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1354*
Proposed Committee Substitute H1354-PCS7497-RG001

Short Title: Improve Torrens Law. (Public)

Sponsors:

Referred to:

May 20, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPROVE AND MODERNIZE THE TORRENS LAND TITLE REGISTRATION PROCEDURES OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 43-5 reads as rewritten:

"**§ 43-5. Fees of officers.**

The examiner ~~hereinbefore~~ provided for in G.S. 43-4 shall ~~receive, as may be allowed by the clerk, a minimum fee of five dollars ($5.00) for such examination of each title of property assessed upon the tax books at the amount of five thousand dollars ($5,000) or less; for each additional thousand dollars ($1,000) of assessed value of property so examined he shall receive fifty cents (50¢); for examination outside of the county he shall receive a reasonable allowance.~~ be compensated as provided in G.S. 1-408. All plats required by this Chapter shall comply with G.S. 47-30 and shall be recorded in the office of the register of deeds, and the recording fee shall be that specified in G.S. 161-10 for recording plats. ~~There shall be allowed to the register of deeds for copying the plot upon registration of titles book two dollars ($2.00) for the first page and one dollar ($1.00) for each succeeding page;~~ The fee for ~~copying or~~ recording new certificates under this ~~Chapter, two dollars ($2.00) for the first page and one dollar ($1.00) for each succeeding page;~~ Chapter shall be that specified in G.S. 161-10 for recording instruments in general. The fee for issuing the certificate and new certificates under this ~~Chapter, fifty cents (50¢) for each;~~ Chapter shall be that specified in G.S. 161-10 for issuing certified copies. The fee for noting the entries or memorandum required and for the entries noting the cancellation of

mortgages and all other entries, if any, herein provided ~~for, fifty cents (50¢) for each entry. The county or other surveyor employed under the provisions of this Chapter shall not be allowed to charge more than forty cents (40¢) per hour for his time actually employed in making the survey and the map, except by agreement with the petitioner, but he shall be allowed a minimum fee of two dollars ($2.00).~~ for shall be that specified in G.S. 161-10 for recording instruments in general.

There shall be no other fees allowed of any nature except as herein provided, and the ~~bond~~ bonds of the ~~register,~~ register and clerk ~~and sheriff~~ shall be liable in case of any mistake, malfeasance, or misfeasance as to the duties imposed upon them by this Chapter in as full a manner as such bond is now liable by law."

Section 2. G.S. 43-13 reads as rewritten:

"**§ 43-13. Manner of registration.**

(a) The ~~county commissioners of each county shall provide for the~~ register of deeds ~~in the county a book, to be called Registration of Titles, in which the register~~ shall ~~enroll,~~ register and index, as hereinafter provided, the decree of title before mentioned ~~and the copy of the plot contained in the petition,~~ and all subsequent transfers of title, and note all voluntary and involuntary transactions in any wise affecting the title to the land, authorized to be entered ~~thereon.~~ thereon in the real property records and indexes. The certificate of title and the entries for voluntary and involuntary transactions shall be indexed on the grantor index in the name 'Registered estate no. ....' and on the grantee index in the name of the registered owner. If the title be subject to trust, condition, encumbrance or the like, the words 'in trust,' 'upon condition,' 'subject to encumbrance,' 'life estate,' or like appropriate insertion shall indicate the fact and fix any person dealing with such certificate with notice of the particulars of such limitations upon the title as appears upon the ~~registry.~~ registry, and no new or additional certificate number shall be issued in such circumstances. No erasure, alteration, or amendment shall be made upon the registry after entry and issuance of a certificate of title except by order of a court of competent jurisdiction.

(b) When a voluntary or involuntary transaction is entered on a certificate of title, the certificate with the new entry shall be copied and recorded and indexed in the real property records and indexes. The copied certificate shall be indexed on the grantor index in the name 'Registered estate no. ....' and on the grantee index in the name of the registered owner."

Section 3. G.S. 43-31 reads as rewritten:

"**§ 43-31. When whole of land conveyed.**

Whenever the whole of any registered estate is transferred or conveyed the same shall be done by a transfer or conveyance ~~upon or~~ attached to the certificate substantially as follows:

~~A.B. and wife~~ The owners (giving the names of the parties owning land described in the certificate ~~and their wives~~) hereby, in consideration of ..... dollars, sell and convey to ~~C.Bill~~ the purchaser (giving name of purchaser) the lot or tract of land, as the case may be, described in the certificate of title hereto attached. The transfer

shall be indexed on the grantor and grantee indexes in the same manner as deeds are indexed.

The same shall be signed and properly acknowledged by the parties ~~and their wives~~ and shall have the full force and effect of a deed in fee simple: Provided, that if the sale shall be in trust, upon condition, with power to sell or other unusual form of conveyance, the same shall be set out in the deed, and shall be entered upon the registration of titles book as hereinafter provided; that upon presentation of the transfer, together with the certificate of title, to the register of deeds, the transaction shall be duly noted and registered in accordance with the provisions of this Chapter, and certificate of title so presented shall be canceled and a new certificate with the same number issued to the purchaser thereof, which new certificate shall fully refer by number and also by name of holder to former certificate just canceled."

Section 4. G.S. 43-32 reads as rewritten:

"**§ 43-32. Conveyance of part of registered land.**

The transfer of any part of a registered estate, either of an undivided interest therein or of a separate lot or parcel thereof, shall be made by an instrument of the transfer or conveyance similar in form to that herein provided for the transfer of the whole of any registered estate, to which shall be attached the certificate of title of such registered estate. In case of the transfer of an undivided interest in a registered estate, such instrument or transfer or conveyance shall accurately specify and describe the extent and amount of the interest transferred and of the interest retained, respectively. In case of a transfer of a separate lot or parcel of a registered estate, such instrument of transfer or conveyance shall describe the lot or parcel transferred either by metes and bounds or by reference to the map or plat attached thereto, and shall in every case be accompanied by a map or plat having clearly indicated thereon the boundaries of the whole of the registered estate and of the lot or parcel to be ~~transferred.~~ transferred, but a new survey of the original registered estate shall not be required. The transfer shall be indexed on the grantor and grantee indexes in the same manner as deeds are indexed."

Section 5. G.S. 43-33 reads as rewritten:

"**§ 43-33. Duty of register of deeds upon part conveyance.**

Upon presentation to the register of deeds of an instrument of transfer or conveyance of an undivided interest in a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of title attached thereto and to issue to each owner a new certificate of title, each bearing the same number as the original certificate of title and accurately specifying and describing the extent and the amount of the interest retained or of the interest transferred, as the case may be. Upon presentation to the register of deeds of an instrument of transfer or conveyance of a separate lot or parcel of a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of the title attached thereto and to issue to each owner a new certificate of title bearing a new number and describing the separate lot or parcel retained or transferred, as the case may be, either by metes and bounds or by reference to a map or plat thereto attached. The register of deeds is responsible for determining that each new certificate of title

contains a description of the property transferred or retained but not for verifying the accuracy of any description."

Section 6. G.S. 43-45 reads as rewritten:

"**§ 43-45. Docketed judgments.**

Whenever any judgment of the superior court of the county in which the registered estate is situated shall be duly docketed in the office of the clerk of the superior court, or any lien or notice of lis pendens is filed in the office of the clerk of the superior court, it shall be the duty of the ~~clerk~~ clerk, upon the request of any interested party, to certify the same to the register of deeds. The register of deeds shall ~~thereupon~~ enter upon the certificate of title, the date, and the amount of the judgment, and the same shall be a lien upon such land as fully as such docketed judgment would be a lien upon unregistered lands of the judgment ~~debtor.~~ debtor, and the register of deeds is authorized to recover the certificate of title pursuant to G.S. 43-40. The register of deeds shall also enter notice of the judgment, lien, or lis pendens on the record copy of the certificate of title, and the encumbrance is valid against the registered estate from the time it is noted on the record copy."

Section 7. G.S. 43-46 reads as rewritten:

"**§ 43-46. Notice of delinquent taxes filed.**

It shall be the duty of the ~~sheriff or other collector of taxes or assessments of each county and town,~~ tax collector of each taxing unit, not later than ~~the first day of March in each year,~~ June 30 following the date the taxes became delinquent, to file an exact memorandum of the delinquency, if any, of any registered land for the nonpayment of the taxes or assessments thereon, including ~~penalty therefor,~~ interest, in the office of the register of deeds for registration; and if such officer fails to perform such duty, and there shall be subsequent to such day a transfer of the land as hereinbefore provided, the grantee shall acquire a good title free from any lien for such taxes and assessments, and ~~such sheriff or other~~ the collector ~~of taxes~~ and his sureties shall be liable for the payment of the taxes and assessments with the ~~penalty and~~ interest thereon. The register of deeds shall enter the notice of delinquency on the record copy of the certificate of title, and the tax lien shall be valid against the registered estate from the time it is noted on the record copy. The register of deeds shall enter the notice of cancellation of the tax lien on the record copy of the certificate of title upon presentation of satisfactory evidence of payment."

Section 8. G.S. 43-47 is repealed.

Section 9. G.S. 43-48 reads as rewritten:

"**§ 43-48. Foreclosure of tax lien. ~~Sale of unredeemed land; application of proceeds.~~**

~~If there be no redemption of land under the preceding section [G.S. 43-47], in accordance with the law, it shall be the duty of the sheriff or other collector of taxes in the county or town in which the land lies to sell the same at public auction for cash, first giving such notice of the time and place of sale as is prescribed for execution sales, and the proceeds of sale shall be applied, first, to the payment of all taxes and assessments then due to the State, county and town, with interest, penalty and costs; second, to the payment of all sums paid by any person who purchased at the former tax sale, with interest and the additional sum of five dollars ($5.00); third,~~

~~to the payment of a commission to the officer making the sale of five per centum (5%) on the first three hundred dollars ($300.00) and two per centum (2%) on the residue of the proceeds; fourth, to the satisfaction of any liens other than the taxes and assessments registered against the land in the order of their priorities; fifth, and the surplus, if any, to the person in whose name the land was previous to sale for taxes, subject to redemption as provided herein, his heirs, personal representatives or assigns.~~ The lien for ad valorem taxes may be foreclosed and the property sold pursuant to G.S. 105-375. A note of the sale under this section shall be duly registered, and a certificate shall be entered and an owner's certificate issued in favor of the purchaser in whom title shall be thereby vested as registered owner, in accordance with the provisions of this Chapter. Nothing in this section shall be so construed as to affect or divert the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes or assessments thereon."

Section 10. This act becomes effective January 1, 1999.

EXPLANATION OF HOUSE BILL 1354 (PCS):
Improve Torrens Law

TO: House Finance Committee
FROM: Tim Hovis, Giles Perry, and Martha Walston, Staff Attorneys
DATE: July 16, 1998
SPONSOR: Representative Brawley

The proposed committee substitute for House Bill 1354 changes antiquated language, revises fees, and updates indexing procedures. The changes in the proposed committee substitute adopted by House JII, are in bold.

BACKGROUND: "Torrens" is an alternate system of land title registration named after Sir Robert Torrens of South Australia, who is credited with drafting the first land title registration law in 1858. The "Torrens" method, as authorized since 1913 by Chapter 43 of the North Carolina General Statutes, allows a person to establish title by a judicial proceeding that produces an official certificate of ownership by judicial decree. This certificate is then registered and is considered conclusive evidence of title. Although this procedure is available statewide, it is apparently used only sporadically as a method of title registration, mainly in the eastern counties of the State.

Section 1 amends G.S. 43-5, the section that sets fees for examiners under the Torrens law. A Torrens examiner is an attorney appointed by the clerk of superior court to make an independent examination of the title after a petitioner has instituted a proceeding to have a parcel of land registered under the Torrens system. Current law provides that the examiner be paid a minimum of $5.00 for property valued at $5,000 or less, and 50 cents for each additional $1,000 of assessed value in the land. Section 1 deletes this archaic fee structure and places compensation of the examiner in the discretion of the clerk of court, as with other related proceedings. The clerk is to determine a reasonable fee and any dissatisfied party has the right to appeal to the judge. Section 1 also amends G.S. 43-5 to require Torrens plats to be recorded as are other plats, with the same fees as provided for other plats in G.S. 161-10. This fee is $21.00 per sheet or page. The fee for recording a new certificate will be the fee charged for instruments in general. This fee is $6.00 for the first page and $2.00 for each additional page. The fee for issuing a certificate will be $3.00 for the first page and $1.00 for each additional page. The section deletes an archaic reference to county surveyors and a confusing waivable restriction on fees charged by surveyors of property involved in the Torrens proceeding. With this change, a surveyor's fee in a Torrens action would be a private matter between the petitioner and the surveyor. The section deletes an obsolete reference to sheriff's bonds. Sheriffs formerly had responsibility for collecting taxes on registered ("Torrenized') land, but that responsibility has long since been repealed.

Section 2 eliminates the requirement that registers of deeds keep a separate book for registered titles, and instead requires them to be indexed in the regular grantor-grantee indexes. Any transactions involving these properties would have to be noted by "registered estate no." so they could easily be identified as a "Torrens" property. Section 2 also requires any new transaction noted on the certificate of title to be copied, recorded and indexed at the register of deeds.

Section 3 updates the language in G.S. 43-31, the section that sets out the proper language to use in a Torrens certificate.

Section 4 eliminates the requirement for a survey of the entire original registered tract when a portion of the tract is transferred.

Section 5 clarifies that in the case of the transfer of a portion of a Torrenized tract, the register of deeds is responsible for ensuring that the new certificate contains a description of the property transferred, but is not responsible for the accuracy of the description.

Section 6 requires the clerk of court, upon request of an interested party, to certify to the register of deeds any judgments, liens, and notices of lis pendens. The register of deeds would then be required to note the judgment, lien, or notice of lis pendens on the record copy of the certificate of title. Recording of notice of the judgment, liens, or lis pendens on the record copy would make the encumbrance valid against the registered estate from the time of recordation.

Section 7 changes the method for attachment of tax liens on registered property. Under current law, tax liens attach on registered property only if the collector files a notice of tax lien with the register of deeds by March 1 of each year. The Bill would change this date to June 30, and require the register of deeds to note the delinquency on the record copy of the certificate of title. **The proposed committee substitute provides that the register of deeds will enter notice of cancellation of the tax lien on the record copy of the certificate of title upon evidence of payment.**

Section 8 repeals G.S. 43-47, a unique method for sale of registered property to satisfy tax liens. The standard tax lien method is referenced in Section 9.

Section 9 eliminates an archaic method for sale and distribution of proceeds of the foreclosure of registered property for taxes or other liens, and references the standard tax lien foreclosure statute.

Section 10 provides that the bill would become effective January 1, 1999.

The PCS deletes a provision that would have authorized the register of deeds to make corrections to registered title certificates upon the death of a life tenant, spouse, or joint tenant. Current law requires these corrections to be made by petitioning the superior court.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1354

SHORT TITLE: Improve Torrens Law

SPONSOR(S): Representatives Brawley, Decker, Goodwin, Gulley, Weatherly, and Yongue.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
	No General Fund Impact				
County Reg. Of Deeds	**Less than $400 Revenue Increase Per Year in Impacted Counties**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Register of Deeds.

EFFECTIVE DATE: January 1, 1999

BILL SUMMARY: The bill makes several changes to the Torrens Act. First, the bill replaces the fee schedule in current law with references to the general fee schedules administered by the register of deeds. Second, the bill defines how registered titles are indexed, and makes special provisions for correction of title at the death of a spouse, life tenant, or joint tenant. Third, the bill updates the procedures for entering judgments, liens, or lis pendens on the record title. Forth, the bill revises the notice procedures for tax delinquency or foreclosure, making it consistent with existing tax collection procedures.

ASSUMPTIONS AND METHODOLOGY: Torrens law is a land registration system, administered by the court, that makes a permanent and complete record of the exact statute of the title. The system registers conclusively the proper ownership of the land. The Torrens system protects absent landholders from squatters who attempt to obtain ownership of the property. As such, large landowners like timber companies, are most likely to use the Torrens system.

Because the bill alters the fee schedule there will be a fiscal impact. The chart below outlines the changes in fees, and indicated of who pays and receives those fees.

Fee Type	Current Fee	Proposed Fee
Examination of Title:	$5.00 up to $5000 in property, and $0.50 for each additional $1000 of property	reasonable fee for service
- paid by landowner		
- paid to examiner		
Recording Plot Upon Reg.	$2.00 for the first page and $1.00 for each additional	$21.00 per page
- paid by landowner		
- paid to Reg. of Deeds		
Recording New Certificates	$2.00 for the first page and $1.00 for each additional	$6.00 for the first page, $2.00 for each additional
-paid by landowner		
- paid to Reg. of Deeds		
Issuing Cert. & New Cert.	$0.50	$3.00 for the first page, $1.00 for each additional
- paid by landowner		
- paid to Reg. of Deeds		
Noting the Entries (Memo)	$0.50 per entry	$6.00 for the first page, $2.00 for each additional
- paid by landowner		
-paid to Reg. of Deeds		
Survey and Map	$0.40 per hour, minimum fee of $2.00	
- paid by landowner		
- paid to county surveyor		

Ten or fewer coastal counties use the Torrens system on a regular basis. One of these counties, Washington, reports that they have 18 Torrens books. They report that their annual fee income from Torrens activity is approximately $125. Their Torrens fee related income under the bill is approximately $300. Beaufort County also uses Torrens. Beaufort reports Torrens related fee income of less than $100 per year. Beaufort estimates that their Torrens fee income will still be less than $500 under the bill.

TECHNICAL CONSIDERATIONS: There is very little data on the use of Torrens law. County Register of Deeds offices do not routinely track the related fee information. As such, some of these numbers reported by Registers of Deeds are estimates.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:
DATE: July15, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 1354*

Short Title: Improve Torrens Law. (Public)

Sponsors: Representatives Brawley; Decker, Goodwin, Gulley, Weatherly, and Yongue.

Referred to: Judiciary II, if Favorable, Finance.

May 20, 1998

A BILL TO BE ENTITLED

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There shall be no other fees allowed of any nature except as herein provided, and the ~~bond~~ bonds of the ~~register,~~ register and clerk ~~and sheriff~~ shall be liable in case of any mistake, malfeasance, or misfeasance as to the duties imposed upon them by this Chapter in as full a manner as such bond is now liable by law."

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(b) When a voluntary or involuntary transaction is entered on a certificate of title, the certificate with the new entry shall be copied and recorded and indexed in the real property records and indexes. The copied certificate shall be indexed on the grantor index in the name 'Registered estate no. ....' and on the grantee index in the name of the registered owner."

Section 3. Chapter 43 of the General Statutes is amended by adding a new section to read:

"**§ 43-30.1. Correction of registered title by the register of deeds upon death of spouse, life tenant, or joint tenant.**

Upon the death of a life tenant in registered property, the spouse of a registered owner, or a joint tenant with right of survivorship, any surviving claimant under the registered title may apply to the register of deeds for a correction to the certificate of title. Upon receipt of the applicable death certificate, the register of deeds may make appropriate changes, deletions, or corrections to the certificate of title. Any interested party may appeal the register of deeds' changes to the certificate of title

under this section by filing with the clerk of superior court a notice of appeal within 30 days of the register of deeds' decision. If not appealed within 30 days, any changes by the register of deeds to the certificate of title pursuant to this section shall become final."

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The same shall be signed and properly acknowledged by the parties ~~and their wives~~ and shall have the full force and effect of a deed in fee simple: Provided, that if the sale shall be in trust, upon condition, with power to sell or other unusual form of conveyance, the same shall be set out in the deed, and shall be entered upon the registration of titles book as hereinafter provided; that upon presentation of the transfer, together with the certificate of title, to the register of deeds, the transaction shall be duly noted and registered in accordance with the provisions of this Chapter, and certificate of title so presented shall be canceled and a new certificate with the same number issued to the purchaser thereof, which new certificate shall fully refer by number and also by name of holder to former certificate just canceled."

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Section 8. G.S. 43-46 reads as rewritten:

"**§ 43-46. Notice of delinquent taxes filed.**

It shall be the duty of the ~~sheriff or other collector of taxes or assessments of each county and town,~~ tax collector of each taxing unit, not later than ~~the first day of March in each year,~~ June 30 following the date the taxes became delinquent, to file an exact memorandum of the delinquency, if any, of any registered land for the nonpayment of the taxes or assessments thereon, including ~~penalty therefor,~~ interest, in the office of the register of deeds for registration; and if such officer fails to perform such duty, and there shall be subsequent to such day a transfer of the land as hereinbefore provided, the grantee shall acquire a good title free from any lien for such taxes and assessments, and ~~such sheriff or other~~ the collector ~~of taxes~~ and his sureties shall be liable for the payment of the taxes and assessments with the ~~penalty and~~ interest thereon. The register of deeds shall enter the notice of delinquency on the record copy of the certificate of title, and the tax lien shall be valid against the registered estate from the time it is noted on the record copy."

Section 9. G.S. 43-47 is repealed.

Section 10. G.S. 43-48 reads as rewritten:

"**§ 43-48. Foreclosure of tax lien. ~~Sale of unredeemed land; application of proceeds.~~**

~~If there be no redemption of land under the preceding section [G.S. 43-47], in accordance with the law, it shall be the duty of the sheriff or other collector of taxes in the county or town in which the land lies to sell the same at public auction for cash, first giving such notice of the time and place of sale as is prescribed for execution sales, and the proceeds of sale shall be applied, first, to the payment of all taxes and assessments then due to the State, county and town, with interest, penalty and costs; second, to the payment of all sums paid by any person who purchased at the former tax sale, with interest and the additional sum of five dollars ($5.00); third, to the payment of a commission to the officer making the sale of five per centum (5%) on the first three hundred dollars ($300.00) and two per centum (2%) on the residue of the proceeds; fourth, to the satisfaction of any liens other than the taxes and assessments registered against the land in the order of their priorities; fifth, and the surplus, if any, to the person in whose name the land was previous to sale for taxes, subject to redemption as provided herein, his heirs, personal representatives or assigns.~~ The lien for ad valorem taxes may be foreclosed and the property sold pursuant to G.S. 105-375. A note of the sale under this section shall be duly registered, and a certificate shall be entered and an owner's certificate issued in favor of the purchaser in whom title shall be thereby vested as registered owner, in accordance with the provisions of this Chapter. Nothing in this section shall be so construed as to affect or divert the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes or assessments thereon."

Section 11. This act becomes effective January 1, 1999.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1354 A BILL TO BE ENTITLED AN ACT TO IMPROVE AND MODERNIZE THE TORRENS LAND TITLE REGISTRATION PROCEDURES OF THE STATE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ 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 1489*
Proposed Committee Substitute H1489-PCS8359-LC

Short Title: Local Tax Information/Refunds. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPROVE COLLECTION OF LOCAL TAXES BY ALLOWING CERTAIN GOVERNMENT OFFICIALS TO SHARE SPECIFIED TAX INFORMATION AND BY ALLOWING A TAXPAYER TO RECEIVE A RELEASE OR REFUND OF PRORATED VEHICLE PROPERTY TAXES IF THE TAXPAYER MOVES OUT-OF-STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-259(b) is amended by adding two new subdivisions to read:

"(5c) To provide the following information to a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes on an annual basis, when the information is needed to enable the authority to administer its tax laws:

a. The name, address, and identification number of retailers who collect the tax on leased vehicles imposed by G.S. 105-187.5.

b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the tax on leased vehicles imposed by G.S. 105-187.5, when the Department determines that the audit results may be of interest to the authority.

(5d) To provide the following information to a county or city on an annual basis, when the county or city needs the information for

the administration of its local tax on prepared food and beverages:

a. The name, address, and identification number of retailers who collect the sales and use taxes imposed under Article 5 of this Chapter and may be engaged in the business of selling prepared food and beverages.

b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the sales and use taxes imposed under Article 5 of this Chapter, when the Department determines that the audit results may be of interest to the county in the administration of its local tax on prepared food and beverages."

Section 2. G.S. 153A-148.1(a) is amended by adding two new subdivisions to read:

"(4) To exchange information with a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes, when the information is needed to fulfill a duty imposed on the authority or on the county.

(5) To exchange information with the Department of Revenue, when the information is needed to fulfill a duty imposed on the Department or on the county."

Section 3. G.S. 105-330.6(c) reads as rewritten:

"(c) If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) either transfers the motor vehicle to a new owner or moves out-of-state and registers the vehicle in another jurisdiction, and the owner surrenders the registration plates from the listed vehicle to the Division of Motor ~~Vehicles and at the date of surrender one or more full calendar months remains in the listed vehicle's tax year,~~ Vehicles, then the owner may apply for a release or refund of taxes on the vehicle for ~~the~~ any full calendar months remaining ~~after surrender.~~ in the vehicle's tax year after the date of surrender. To apply for a release or refund, the owner must present to the county tax collector within 120 days after surrendering the plates the receipt received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is 12 and the numerator of which is the number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax notice with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1489*

Short Title: Rental Tax Information Sharing. (Public)

Sponsors: Representative Neely.

Referred to: Judiciary II, if favorable, Finance.

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE TAX OFFICIALS TO SHARE TAX INFORMATION TO FACILITATE COLLECTION OF VEHICLE RENTAL TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(5b) To exchange information regarding the taxes on leased vehicles imposed by G.S. 105-187.5 and Article 50 of this Chapter with a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes, when the information is needed to fulfill a duty imposed on the authority or on the Department of Revenue."

Section 2. G.S. 153A-148.1(a) is amended by adding a new subdivision to read:

"(4) To exchange information regarding taxpayers subject to the vehicle rental tax imposed by Article 50 of this Chapter with a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes, when the information is needed to fulfill a duty imposed on the authority or on the county."

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

EXPLANATION OF HOUSE BILL 1489 (PCS):
Local Tax Information/Refunds

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 15, 1998
SPONSOR: Representative Neely

House Bill 1489 makes the following two change relating to local taxes, effective when the bill becomes law:

1. Sections 1 and 2 authorize the Department of Revenue and county tax officials to share certain tax information with one another and with regional transit authorities in order to facilitate collection of taxes. An earlier version of these changes was recommended by the Public Transit Study Committee.
2. Section 3 allows a motor vehicle owner to receive a prorated refund or release of property taxes on the vehicle when the owner surrenders the registration plates to the Division of Motor Vehicles because the owner has moved to a different state and registered the vehicle in another jurisdiction. This change was recommended by the Revenue Laws Study Committee.

Information Sharing. The Department of Revenue collects the alternate highway use tax, which is a gross receipts tax on vehicle rentals. Regional transit authorities are authorized to levy gross receipts taxes on vehicle rentals. In addition, the Department of Revenue collects sales and use taxes from retailers, including restaurants and other businesses that sell prepared food and beverages. Several local governments are authorized to levy local taxes on prepared food and beverages.[1] The compliance and audit information gathered by the Department of Revenue in collecting the State vehicle rental tax could assist regional authorities in enforcing their local vehicle rental taxes and the compliance and audit information gathered by the Department of Revenue in collecting sales and use taxes could assist local governments in enforcing their local taxes on prepared food and beverages. G.S. 105-259 prohibits the Department of Revenue from revealing confidential tax information, however.

Section 1 of this bill would authorize the Department of Revenue to provide regional transit authorities, on an annual basis, identifying information about the retailers from whom it collects the State vehicle rental tax. In addition,

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[1] Charlotte/Mecklenburg, Cumberland County, Dare County, Wake County, and the Town of Hillsborough.

Section 1 would authorize the Department of Revenue to provide counties and cities, on an annual basis, identifying information about the retailers from whom it collects sales and use taxes who might be engaged in the business of selling prepared food and beverages.

Some counties audit vehicle rental dealers for property tax purposes and audit retailers of prepared food and beverages for purposes of the local meals tax. The information gathered by a county in these audits could assist regional transit authorities in enforcing their vehicle rental taxes and could assist the State in enforcing the sales and use taxes it collects. G.S. 153A-148.1 prohibits counties from sharing tax information about a taxpayer's income or receipts, however. Section 2 of this bill would authorize counties and regional transit authorities to exchange tax information about vehicle rental dealers with one another when the exchange will aid either agency in fulfilling its duties. Section 2 would also authorize counties and regional transit authorities to provide tax information to the Department of Revenue when the information would help the Department of Revenue in its duties.

Property Taxation of Motor Vehicles. In 1993, counties began taxing motor vehicles that are registered with the Division of Motor Vehicles on a revolving, year-round basis. Under this system, the taxpayer receives a property tax notice a couple of months after the registration is obtained or renewed and the taxes are due within four months after the registration was obtained or renewed. If the taxes remain unpaid for more than four months after they become due, the county places a block on the vehicle's registration with DMV. DMV will then refuse to renew the vehicle's registration the following year unless the taxpayer obtains a receipt showing that the previous year's taxes have been paid.

In some cases, taxpayers move out of state during the tax year. Therefore, the block on the vehicle's registration would not impact them if they have not paid the property taxes. In most instances, the taxpayer is willing to pay the taxes on the part of the tax year that the vehicle was registered in North Carolina. In order to obtain part of the tax liability, some counties prorate the amount of taxes due, although they do not have statutory authority to do so. This proposal provides that authority by requiring the partial release or refund of property taxes on a motor vehicle when the taxpayer surrenders the vehicle's registration plate to the DMV because the taxpayer has moved out of state and registered the vehicle in another jurisdiction. The taxpayer may apply for a release or refund of taxes on the vehicle for any full calendar months remaining in the vehicle's tax year after the date of surrender.

Background on Regional Transit Authorities. In 1997, the General Assembly enacted S.L. 1997-417, which authorized a regional transit authority to levy a gross receipts tax of up to 5% on retailers within the region engaged in the

business of renting passenger motor vehicles and motorcycles. The tax applies only to short-term rentals, i.e., rentals for a period of less than one year. The tax is collected by the authority but is otherwise administered in the same way as the optional highway use tax on gross receipts from vehicle rentals. This optional highway use tax is 8% on short-term rentals, so the combined tax within the jurisdiction of the authority would be 13% if the authority levies the full 5% tax. Each authority may use the proceeds of the tax for its public transportation purposes. Before levying or increasing the tax, the authority must obtain approval from each county in the region.

A regional transit authority is a regional public transportation authority created under Article 26 of Chapter 160A of the General Statutes or a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes. The authority created under Article 26, the Triangle Transit Authority for Wake, Durham, and Orange Counties, is governed by a board of trustees appointed by the counties creating the authority and larger cities within the counties. Article 27 of Chapter 160A, enacted in 1997, authorizes the creation of a regional transit authority for the Triad region. The Triad Transit Authority may be created by the four largest cities of the five counties served by the Authority in order to promote the development of sound transportation systems in the area served by the Authority. The Authority would be governed by a board of trustees consisting of the mayors of the four largest cities and the chair of each Metropolitan Planning Organization in the area. The counties served by the Authority would be Forsyth, Guilford, Randolph, Davidson, and Alamance. The four major cities involved in the creation of the Authority are Greensboro, High Point, Winston-Salem, and Burlington.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1489 PCS H1489-CSLC-7/7

SHORT TITLE: Local Tax Information/Refunds

SPONSOR(S): Representative Neely

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Regional Transportation Authority, Regional Public Transportation Authority, County and City Governments.

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY: This bill authorizes tax officials to share information, about the taxes paid on leased vehicles, with a regional public transportation authority or a regional transportation authority. The bill directs state tax officials to share information regarding sales and use taxes with local government representatives. Finally, the bill gives counties the specific authority to release or refund the taxes on a motor vehicle when the taxpayer moves out of state and surrenders their license plate.

ASSUMPTIONS AND METHODOLOGY: The information sharing portion of the bill will have no impact on state revenues and will impose a very minimal expense on the Department of Revenue. The Department of Revenue has indicated that this bill will be easy to administer. As for local governments, there may be some positive revenue impact if the information facilitates the collection of more taxes. The section dealing with the collection of motor vehicle taxes could have an impact at the local level. However, because may counties currently prorate this item, the bill will not create a significant change in local revenues.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:

DATE: July 15, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1489*
Proposed Committee Substitute H1489-PCS8362-LC

Short Title: Local Tax Information/Refunds. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPROVE COLLECTION OF LOCAL TAXES BY ALLOWING CERTAIN GOVERNMENT OFFICIALS TO SHARE SPECIFIED TAX INFORMATION AND BY ALLOWING A TAXPAYER TO RECEIVE A RELEASE OR REFUND OF PRORATED VEHICLE PROPERTY TAXES IF THE TAXPAYER MOVES OUT-OF-STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-259(b) is amended by adding two new subdivisions to read:

"(5c) To provide the following information to a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes on an annual basis, when the information is needed to enable the authority to administer its tax laws:

a. The name, address, and identification number of retailers who collect the tax on leased vehicles imposed by G.S. 105-187.5.

b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the tax on leased vehicles imposed by G.S. 105-187.5, when the Department determines that the audit results may be of interest to the authority.

(5d) To provide the following information to a county or city on an annual basis, when the county or city needs the information for

the administration of its local tax on prepared food and beverages:

a. The name, address, and identification number of retailers who collect the sales and use taxes imposed under Article 5 of this Chapter and may be engaged in the business of selling prepared food and beverages.

b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the sales and use taxes imposed under Article 5 of this Chapter, when the Department determines that the audit results may be of interest to the county or city in the administration of its local tax on prepared food and beverages."

Section 2. G.S. 153A-148.1(a) is amended by adding two new subdivisions to read:

"(4) To exchange information with a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes, when the information is needed to fulfill a duty imposed on the authority or on the county.

(5) To exchange information with the Department of Revenue, when the information is needed to fulfill a duty imposed on the Department or on the county."

Section 3. G.S. 105-330.6(c) reads as rewritten:

"(c) If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) either transfers the motor vehicle to a new owner or moves out-of-state and registers the vehicle in another jurisdiction, and the owner surrenders the registration plates from the listed vehicle to the Division of Motor ~~Vehicles and at the date of surrender one or more full calendar months remains in the listed vehicle's tax year,~~ Vehicles, then the owner may apply for a release or refund of taxes on the vehicle for ~~the~~ any full calendar months remaining ~~after surrender.~~ in the vehicle's tax year after the date of surrender. To apply for a release or refund, the owner must present to the county tax collector within 120 days after surrendering the plates the receipt received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is 12 and the numerator of which is the number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax notice with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
H.B. 1489 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE TAX OFFICIALS TO SHARE TAX INFORMATION TO FACILITATE COLLECTION OF VEHICLE RENTAL TAXES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill (# 1), ☑ which changes the title, unfavorable as to original bill ~~(Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 649
Finance Committee Substitute Adopted 5/20/97
Proposed Committee Substitute S649-CSLA-002

Short Title: Amend Lobbying Law. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ~~ten dollars ($10.00).~~ fifty dollars ($50.00) per day for each day the report is late, not to exceed one thousand dollars ($1,000). The Secretary of State may reduce or waive a late filing fee under this section for excusable neglect, unavoidable delay, or other good cause.

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 2. G.S. 120-47.7(d) reads as rewritten:

"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ~~ten dollars ($10.00).~~ fifty dollars ($50.00) per day for each day the report is late, not to exceed one thousand dollars ($1,000). The Secretary of State may reduce or waive a late filing fee under this section for excusable neglect, unavoidable delay, or other good cause.

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. G.S. 120-47.9 reads as rewritten:

"§ 120-47.9. Punishment for violation.

Whoever willfully violates any provision of this Article shall be guilty of a Class ~~1~~ A1 misdemeanor. In addition, no lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a lobbyist for a period of two years following his conviction."

Section 3. This act becomes effective January 1, 1999.

EXPLANATION OF SENATE BILL 649 (PCS):
Amend Lobbying Law

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: July 15, 1998
SPONSOR: Senator Miller

The proposed committee substitute for Senate Bill 649 increases the penalty for late filing of lobbying expense reports by lobbyists and lobbyists' principals to $50.00 per day not to exceed $1,000. The Secretary of State is given the discretion to reduce or waive a late filing fee for excusable neglect, unavoidable delay, or other good cause. The proposed committee substitute also increases the punishment for a willful violation of any provision of the lobbying article from a Class 1 misdemeanor to a Class A1 misdemeanor. The current law only requires an additional $10 late filing fee. The bill as introduced was a recommendation of the Secretary of State's office and passed the Senate during the Long Session. The bill was given a favorable report by the House Committee on Ethics.

Section 1 of the proposed committee substitute amends the penalties applicable to lobbyists who fail to file their required lobbying expense reports on time. Under this section a lobbyist would be required to pay $50.00 per day for each day the report is late not to exceed $1,000. The Second Edition of the Bill, that was originally before this Committee, required a lobbyist to pay $10 for a report which is less than 30 days late. After 30 days, the penalty increased to $50.00 per day up to a maximum of $1,000. The Second Edition of the bill also provided an appeal process to seek a waiver of the penalty, where excusable neglect, unavoidable delay, or impossibility of performance could be shown as good cause justifying the delay. The proposed committee substitute provides that the Secretary of State may reduce or waive a late filing fee for excusable neglect, unavoidable delay or other good cause.

Section 2 amends the penalties applicable to lobbyist's principals who fail to file their required lobbying expense reports on time in the same manner as is being amended for lobbyists. A principal means the entity in whose behalf the lobbyist influences or attempts to influence legislative action.

Section 3 increases the penalty for a violation of the lobbying article from a Class 1 misdemeanor to a Class A1 misdemeanor.

Current law requires a lobbyist and a lobbyist's principal to file an expense report with the Secretary of State within 60 days after the last day of the regular session. The report must include all expenditures made between January 1 and the last day of the regular session. The report must also show the date of each expenditure, to whom paid, the name of any legislator benefitting from the expenditure and the amount of each expenditure made in connection with lobbying in the categories of transportation, lodging, entertainment, food, any item having a cash equivalent value of more than $25 and contributions made or promised.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 649 PCS

SHORT TITLE: Lobbyist Penalty DRAFT

SPONSOR(S): Senator B. Miller

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	0	May result in a $225 - $3750 revenue increase			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State.

EFFECTIVE DATE: January 1, 1999.

BILL SUMMARY: This bill will increase the penalty for filing a late lobbying expense report with the Secretary of State's office. Currently there is a one time late fee of $10.00. The bill increases the late fee to $50.00. The maximum total fine is $1000.00. It also increases the penalty for non-compliance with the requirement, moving it to a Class A1 misdemeanor. Under current law the non-compliance is a Class 1 misdemeanor.

ASSUMPTIONS AND METHODOLOGY: According to the Secretary of State's office, there were 610 lobbyists and 497 principals for the 1997 legislative session (1107 total). End of session reports were due to that office by October 27, 1997. 121 lobbyists and principals did not file their reports by that date. At this point, 95 of those delinquent lobbyists and principals have filed late reports and paid the associated fees for that session. Twenty-six lobbyists and principals filled a late report but did not pay the late fee. As such, 11% of lobbyists and principals were late filers. The Secretary of State reports that reporting late fees created $950 in revenue.

During the 1996 session, North Carolina had 584 lobbyists and 636 principals (1220 total). Of these principals and lobbyists, 278 submitted late reports. As such, in 1996, approximately

22.8% of the lobbyists and principals were late reporters. Late reporting fee estimates are not available for the 1996 session.

The Secretary of State's office believes that the number of late filers declined from 1996 to 1997 as a result of their increased efforts to contact lobbyists and principals about their reporting requirements.

North Carolina is one of only three states that link their reporting exclusively to the legislative calendar. One other state, West Virginia, links their reporting period to the legislative session and a series of annual dates. Of the states with a similar reporting calendar, one does not access a dollar penalty, and another addresses the issue only when the late reporting is "willful and intentional" requiring court action. Neither drew revenue from penalties in 1997. The third state, New Mexico, charges a penalty of $50 per day, to a maximum of $5000. New Mexico revenue data is not available.

Of our surrounding states, only Georgia does not have a penalty (see chart for explanation). The average total late fee collections from the two states that provided revenue information, South Carolina and Florida, is $4,275. In both states approximately 4% of lobbyists and principals were diligent in the 1997. Both have a progressive penalty system somewhat similar to the bill. Florida's penalty structure is most similar, with a $50 per day fee and no maximum.

Assuming the 4% experience in Florida and South Carolina applied, under the bill North Carolina could expect approximately 47 individuals to be delinquent under the new system (1996 and 1997 average number of lobbyist and principals, times 4%). Given the experiences of Florida and South Carolina, these individuals would likely pay between $25 and $100 in fines, for a total potential revenue of $1175 to $4700. This would be a revenue increase of $225 to $3750 after each legislative session.

There will be no 1998-9 fiscal impact to the bill because the last fees are collected after the legislative session.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:
DATE: July 15, 1998

SURVEY OF STATE LOBBYIST AND PRINCIPAL PENALTIES FOR LATE REPORTS

SURROUNDING STATES

	Penalty	Grace Period	Initial Fee	Before 30 Days	After 30 Days	Maximum	Number Accessed	Total Revenue
South Carolina (802)	yes	10 days	$100	10/day	n/a	$600	35	$3,500
Virginia	yes	no	$50	50/day after 10	n/a	n/a	?	?
Tennessee	yes	5 days	$0	25/day	n/a	$750	?	?
Kentucky	yes	no	$0	100	n/a	$1,000	0	$0
Georgia	no	n/a	$50	one time 25	n/a	$75	0	$0
Florida (5124**)	yes	no	$0	50/day	n/a	n/a	206	$5,050
North Carolina (1220)	yes	no	$10		n/a	$10	278	$2,780

STATES WITH SIMILAR REPORTING TIMELINES

New Mexico	yes	no	n/a	50/day	n/a	$5,000	?	?
South Dakota	no	n/a	n/a	n/a	n/a	n/a	n/a	n/a
West Virginia	willfully & intentional		n/a	n/a	n/a	n/a	n/a	n/a

* While the statutes impose the above fines, they are not enforced as a result of a court order.

States with similar reporting timelines are those states whose filing deadline is after a legislative session.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 649
Finance Committee Substitute Adopted 5/20/97

Short Title: Lobbyist Penalty. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR LATE FILING OF REPORTS BY LOBBYIST AND PRINCIPAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 2. G.S. 120-47.7(d) reads as rewritten:

"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist's principal who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. This act becomes effective January 1, 1999.

EXPLANATION OF SENATE BILL 649 (2d Ed):
Lobbyist Penalty

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 24, 1998
SPONSOR: Senator Miller

Senate Bill 649 increases the penalty for late filing of lobbying expense reports by lobbyists and lobbyists' principals for reports filed more than 30 days late. The current law only requires an additional $10 late filing fee. The bill is a recommendation of the Secretary of State's office and passed the Senate during the Long Session. The bill has been given a favorable report by the House Committee on Ethics.

Section 1 of the bill amends the penalties applicable to lobbyists who fail to file their required lobbying expense reports on time. Under this section a lobbyist would be required to pay $10 for a report which is less than 30 days late. After 30 days, the penalty increases to $50 per day up to a maximum of $1,000. An appeal process to seek a waiver of the penalty is provided, where excusable neglect, unavoidable delay, or impossibility of performance can be shown as good cause justifying the delay. This appeal is made to the Secretary of State.

Section 2 amends the penalties applicable to lobbyist's principals who fail to file their required lobbying expense reports on time in the same manners as is being amended for lobbyists. A principal means the entity in whose behalf the lobbyist influences or attempts to influence legislative action.

Current law requires a lobbyist and a lobbyist's principal to file an expense report with the Secretary of State within 60 days after the last day of the regular session. The report must include all expenditures made between January 1 and the last day of the regular session. The report must also show the date of each expenditure, to whom paid, the name of any legislator benefitting from the expenditure and the amount of each expenditure made in connection with lobbying in the categories of transportation, lodging, entertainment, food, any item having a cash equivalent value of more than $25 and contributions made or promised. If more than 10 legislators benefitted or were invited to benefit from an expenditure, the lobbyist is only required to report the number of legislators or, with particularity, the basis for their selection.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 649
Finance Committee Substitute Adopted 5/20/97

Short Title: Lobbyist Penalty. (Public)

Sponsors:

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April 2, 1997

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 649
Finance Committee Substitute Adopted 5/20/97
Proposed Committee Substitute S649-PCSA885-LA002

Short Title: Amend Lobbying Law. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ~~ten dollars ($10.00).~~ fifty dollars ($50.00) per day for each day the report is late, not to exceed one thousand dollars ($1,000). The Secretary of State may reduce or waive a late filing fee under this section for excusable neglect, unavoidable delay, or other good cause.

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

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"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by

United States mail to the Secretary of State the required report and a late filing fee of ~~ten dollars ($10.00).~~ fifty dollars ($50.00) per day for each day the report is late, not to exceed one thousand dollars ($1,000). The Secretary of State may reduce or waive a late filing fee under this section for excusable neglect, unavoidable delay, or other good cause.

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. G.S. 120-47.9 reads as rewritten:

"**§ 120-47.9. Punishment for violation.**

Whoever willfully violates any provision of this Article shall be guilty of a Class ~~I~~ A1 misdemeanor. In addition, no lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a lobbyist for a period of two years following his conviction."

Section 3. This act becomes effective January 1, 1999.

Rep Eddins

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 649 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR LATE FILING OF REPORTS BY LOBBYIST AND PRINCIPAL.

☐ 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 (# 1), ☑ which changes the title, unfavorable as to Senate committee substitute bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

Horse Finance — July 16, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ben Kuhn	Kilpatrick Stockton
Allyson Duncan	Kilpatrick Stockton
Bill Campbell	Inst. of Govt
Dwayne Bacon	Lenoir Co Register of Deeds
Andy Romanet	N.C.A.M.
Jean M Killian	Moore - Van Allen
Paul Ziglin	OSBM
Bernard Allen	SOS
Scott Templeton	Sec State
Andy Sabol	Dept. of Revenue
Louis F. Wooten, III	P.O. Box 3007, Ral. N.C. 27602
Kevin D. Howell	NCBA

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Doug Rogers	NCDOT
Charles Allen	NCDOR
Leslie Bevacqua	NCCBT
Natalie Haskins	Charlotte Chamber
Katherine Davis	ElectriCities of NC
Jim Blackburn	NC Assoc of County commissioners
R. Paul Wilms	NCMBA
Ed Regan	N.C. Assoc of C. Comm

Box 16

1. 1998 House Finance (arranged in reverse order: July 14-May 13)
2. 1997 House Finance – Local, Regional & State Revenues
3. 1998 House Finance – Local, Regional & State Revenues
4. 1998 House Finance – Special Session on Child Health Care (CHIP)
5. 1997 House Human Resources
6. 1997 House Human Resources – Aging
7. 1997 House Human Resources – Families
8. 1998 House Human Resources – Families
9. 1998 House Human Resources
10. 1997-98 House Insurance

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, JULY 14, 1998

8:30 A.M. ROOM 544-LOB

Rep. Dickson called the meeting to order and asked the Pages to introduce themselves to the Committee. A silent roll was taken, (roll list denotes members present).

HB-1320 NO TAX ON MOVIES

This was removed from the agenda by the sponsor.

HB-1518 EAGLE SCOUT SPECIAL PLATES

Rep. Eddins explained the bill. Rep. Cunningham asked if Division of Motor Vehicles objected. Ms. Diane Johnson, DMV responded there was no objection. Rep. Hill moved for a favorable report. Rep. Boyd-McIntyre questioned what generated this plate. Rep. Eddins responded. Rep. Jarrell made additional comment in favor of the bill. The vote was taken and passed.

HB-1544- RAISE COURT FEES

Rep. Buchanan sent forth a technical amendment and Ms. Cindy Avrette, Research Division explained it. The vote was taken and the amendment was adopted. Rep. Gardner explained the bill. Rep. Goodwin spoke in favor of the bill and moved for a favorable report, unfavorable to the original bill. Rep. Luebke asked why this was a general fund appropriation. Rep. Gardner and Ms. Avrette responded. Rep. Hightower requested a more detailed explanation and Ms. Avrette responded. The vote was taken and given a favorable report, unfavorable to the original bill.

Chairman Dickson welcomed Rep. Gamble back to the Committee after his absence due to his sick wife.

The meeting adjourned at 8:50 a.m.

W Dickson
Rep. Dickson, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

TUESDAY, JULY 14, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Dickson

BILLS FOR DISCUSSION:

HB-1320	Tax on Movies	Rep. Cansler
HB-1518	Eagle Scout Special Plates	Rep. Eddins
HB-1544	Raise Court Fees	Rep. Gardner

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1320

Short Title: Tax on Movies. (Public)

Sponsors: Representatives Cansler, Brawley, Capps, Gray, Hill, Neely, Ramsey, C. Wilson; Esposito and Starnes.

Referred to: Finance.

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE STATE PRIVILEGE TAX ON GROSS RECEIPTS FROM MOTION PICTURE SHOWS.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-38.1. Amusements - Motion picture shows.**

(a) Tax. -- A privilege tax at the rate of one percent (1%) is imposed on the gross receipts of a person who is engaged in the business of operating a motion picture show for which an admission is charged. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month. If a person offers an entertainment or amusement that includes both a motion picture taxable under this section and an entertainment or amusement taxable under G.S. 105-37.1 or G.S. 105-38, the tax in G.S. 105-37.1 or G.S. 105-38, as appropriate, applies to the entire gross receipts and the tax levied in this section does not apply.

(b) Exemption. -- Gross receipts from a motion picture show promoted and managed by a qualifying corporation that operates a center for the performing and visual arts is exempt from the tax imposed under this section if the motion picture is shown at the center and if the showing of motion pictures is not the primary purpose of the center. As used in this subsection, 'qualifying corporation' and 'center for the performing and visual arts' have the same meaning as in G.S. 105-37.1(a)."

Section 2. This act becomes effective October 1, 1998.

EXPLANATION OF HOUSE BILL 1320:
Tax on Movies

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: July 9, 1998
SPONSOR: Representatives Cansler, Brawley, Capps, Gray, Hill, Neely, Ramsey, C.Wilson, Esposito and Starnes.

House Bill 1320 is a recommendation of the Revenue Laws Study Committee and reduces the current 3% gross receipts tax on motion pictures to 1%, effective October 1, 1998. The Bill also clarifies that if a taxpayer offers an entertainment or amusement that includes both a motion picture and an entertainment or amusement that is subject to the 3% gross receipts tax, then the higher rate applies. The October 1, 1998, effective date would give the Department of Revenue time to print the forms and identify taxpayers. Sales tax would continue to be assessed on food and drink sold at motion picture shows.

The Bill clarifies the exemption of motion pictures that are shown at a center for the performing and visual arts that is promoted and managed by an organization organized for religious, charitable, scientific, literary, or educational purposes. The showing of the motion picture show may not be the primary purpose of the center. This exemption was set out in the privilege license statute on movies that was repealed , effective July 1, 1997.

History

The gross receipts tax on motion picture shows was first codified in 1939. The rate of this tax was the same as the sales tax rate. There was also an annual license tax assessed against motion picture shows, and this license tax was applied as a credit upon or advance payment of the gross receipts tax.

In 1943, the General Assembly repealed the gross receipts tax on motion picture shows, and assessed this tax only on other forms of entertainment not otherwise taxed or specifically exempted. The annual license tax continued to be imposed. In 1949, the General Assembly enacted a new statute, G.S. 105-37.1, that assessed an annual license tax and a gross receipts tax on amusements not otherwise taxed or specifically exempted. Since motion picture shows were paying a license tax, they were not subject to G.S. 105-37.1. In 1949, the General Assembly first taxed operating outdoor and drive-in motion picture shows. The tax was based upon population of the town and car capacity. In 1989, the General Assembly amended the privilege license tax on drive-ins by doing away

with the tax rate based upon population and car capacity and, instead, assessing a $100 privilege license tax.

During the Second Extra Session of the 1996 Session, a number of State privilege license taxes were repealed, including the privilege taxes on motion picture shows. The Revenue Laws Study Committee had recommended to the 1995 General Assembly that most of the State privilege license taxes imposed under Article 2 of Chapter 105 of the General Statutes be repealed, effective July 1, 1997. The State privilege license taxes on motion picture shows that were repealed were the following:

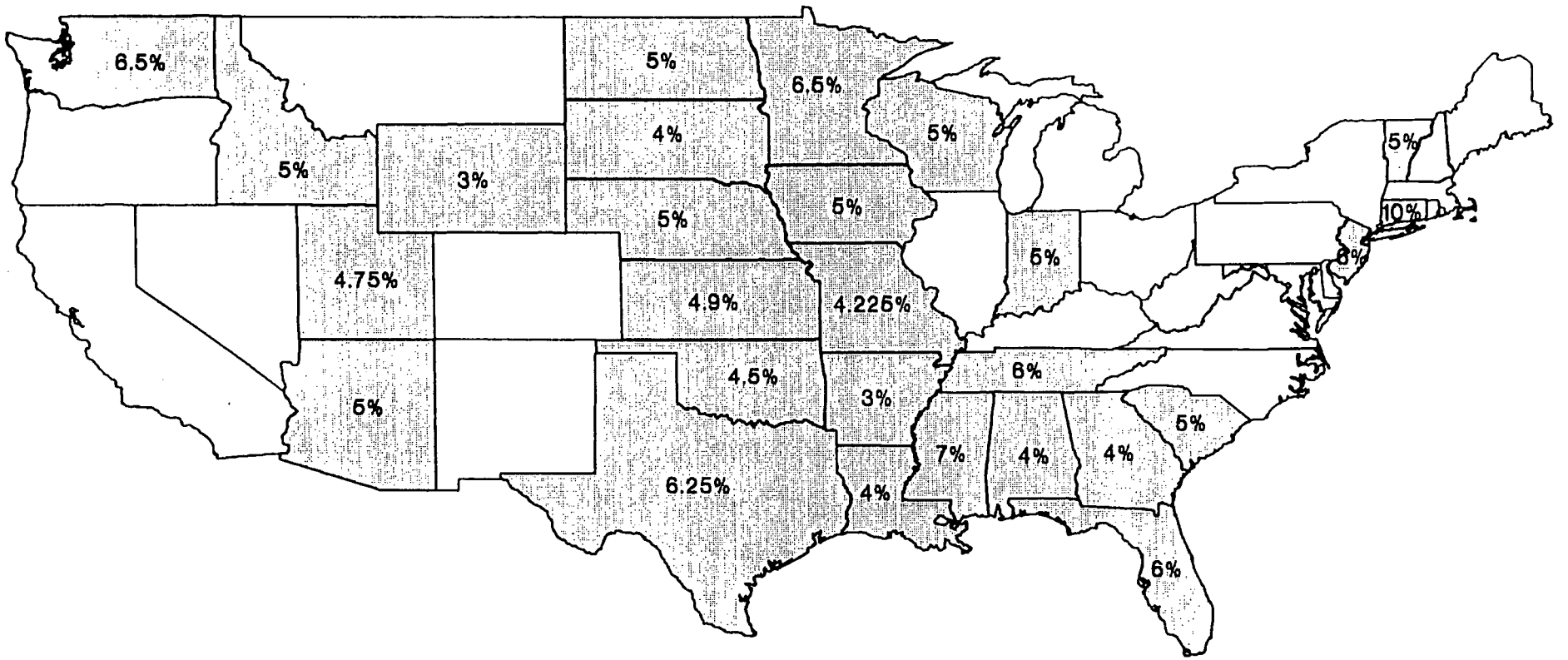
- G.S. 105-36 - Required those engaged in the business of manufacturing, selling, leasing, furnishing and/or distributing films which an admission fee was charged to apply for a privilege license and pay a tax thereon of $625 a year.
- G.S. 105-36.1 - Required those engaged in the business of operating an outdoor or drive-in moving picture show for compensation to apply for a privilege license and a pay a tax thereon of $100 a year.
- G.S. 105-37 - Required those engaged in the business of operating a moving picture show for compensation to apply for a license and pay $200 for each room, hall, or tent used. Only half the tax was required if the motion picture show operated three days or less each week.

When the foregoing statutes were repealed, effective July 1, 1997, motion picture shows fell into the category of amusements not otherwise taxed as set out in G.S. 105-37.1 and, therefore, subject to the 3% gross receipts tax and the $50.00 annual license tax assessed in that statute. However, the Department of Revenue did not begin assessing motion picture shows a gross receipts tax when the privilege license taxes were repealed. The Department believed that when the General Assembly repealed these license taxes, it did not intend to assess any tax on motion picture shows. During the 1996 Session, there appears to have been no discussion of a gross receipts tax on theaters, if the privilege tax was repealed.

The Commerce Clearing House State Tax Guide shows that 27 states tax movie admissions in one fashion or another. (see attached map). Twenty-one states simply apply their sales tax to theater admissions. Alabama and Arkansas have a specific gross receipts tax on movie admissions, while Connecticut and South Carolina have a general admissions tax. Arizona has a transaction privilege tax on theaters and Indiana has a gross income tax on theaters. Twenty-five of these twenty-seven states have movie taxes higher than North Carolina's 3% gross receipts tax. Eleven of the states that tax movie admissions are members of the Southern Legislative Conference.

Staff's research also found that North Carolina's policy of taxing movie concessions is consistent with other states and the District of Columbia.

STATE TAX ON MOVIE ADMISSIONS



Source: CCH (Commerce Clearing House Inc.) State Tax Guide

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1320 (First Edition)

SHORT TITLE: Tax on Movies

SPONSOR(S): Representative Cansler, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	$1,525,657	$2,118,498	$2,225,021	$2,336,521	$2,452,998

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: October 1, 1998

BILL SUMMARY: The bill imposes a one percent gross receipts tax on motion picture shows instead of the three percent tax charged other entertainment or amusement.

BACKGROUND: When the privilege tax on motion picture shows was repealed on July 1, 1997, movies then became subject to the 3% gross receipts tax charged amusements and entertainment. However, the Department of Revenue chose not to assess this tax in FY 97-98 until the General Assembly clarified that the tax should be collected. The Department's uncertainty arose from the absence of debate by the 1996 General Assembly on the issue of imposing a gross receipt tax on movies.

ASSUMPTIONS AND METHODOLOGY:

A 1% gross receipts tax on movie admissions would generate approximately $1.5 million in General Fund revenue in FY 1998-99 if enacted on October 1, 1998. The estimate of gross receipts generated by North Carolina movie theaters in 1996 is based on data from the Motion Pictures Association of America. Nationwide, the box office gross was $5.9 billion on 1.3 billion tickets sold. The average admission price at the 29,690 movie screens across the country was $4.42. The average gross revenue per screen in 1996 was $199,107. The National

Association of Theater Owners reported 897 movie screens in North Carolina in 1996. Assuming NC theater gross revenues equal the national average, the 897 Tarheel screens produced $178.6 million in revenues in 1996. If a 1% gross receipts tax were applied, the state would have earned $1.78 million in taxes in 1996.

The number of NC screens has grown 5% a year since 1992, but gross revenue per screen has risen and fallen over the last five years. For estimating purposes, it is assumed that the number of movie screens will increase 5% a year, but there will be no increase in gross revenue per screen.

	NC Screens	Gross per screen	Gross revenue	1% tax
1996	897	$199,107	$ 178,598,979	$ 1,785,990
1997	942	$199,107	$ 187,558,794	$ 1,875,588
1998	989	$199,107	$ 196,916,823	$ 1,969,168
1999	1,038	$199,107	$ 206,673,066	$ 2,066,731
2000	1,090	$199,107	$ 217,026,630	$ 2,170,266
2001	1,145	$199,107	$ 227,977,515	$ 2,279,775
2002	1,202	$199,107	$ 239,326,614	$ 2,393,266
2003	1,262	$199,107	$ 251,273,034	$ 2,512,730

The chart below assumes an October 1, 1998 effective date for FY 1998-99. The remaining years are adjusted for fiscal years by taking half of one calendar year plus half of the next calendar year.

Fiscal Year	Revenue
1998-99	$ 1,525,657
1999-00	$ 2,118,498
2000-01	$ 2,225,021
2001-02	$ 2,336,521
2002-03	$ 2,452,998

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:

DATE: May 24, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1518
Committee Substitute Favorable 6/18/98

Short Title: Eagle Scout Special Plates. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE EAGLE SCOUT SPECIAL REGISTRATION PLATES TO EAGLE SCOUTS OR THEIR PARENTS OR GUARDIANS AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE SMALLER REGISTRATION PLATES FOR MOTORCYCLES AND MOTORCYCLE TRAILERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. -- The Division shall issue the following types of special registration plates:

(1) Administrative Officer of the Courts. -- Issuable to the Director of the Administrative Office of the Courts. The plate shall bear the phrase "J-20".

(2) Amateur Radio Operator. -- Issuable to an amateur radio operator who holds an unexpired and unrevoked amateur radio license issued by the Federal Communications Commission and who asserts to the Division that a portable transceiver is carried in the vehicle. The plate shall bear the phrase "Amateur Radio". The plate shall bear the operator's official amateur radio call letters, or call letters with numerical or letter suffixes so that an owner of more than one vehicle may have the call letters on each.

(3) American Legion. -- Issuable to a member of the American Legion. The plate shall bear the words "American Legion" and the

emblem of the American Legion. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(4) Civil Air Patrol Member. -- Issuable to an active member of the North Carolina Wing of the Civil Air Patrol. The plate shall bear the phrase "Civil Air Patrol". A plate issued to an officer member shall begin with the number "201" and the number shall reflect the seniority of the member; a plate issued to an enlisted member, a senior member, or a cadet member shall begin with the number "501".

(5) Civic Club. -- Issuable to a member of a nationally recognized civic organization whose member clubs in the State are exempt from State corporate income tax under G.S. 105-130.11(a)(5). Examples of these clubs include Jaycees, Kiwanis, Optimist, Rotary, Ruritan, and Shrine. The plate shall bear a word or phrase identifying the civic club and the emblem of the civic club. The Division may not issue a civic club plate authorized by this subdivision unless it receives at least 300 applications for that civic club plate.

(6) Class D Citizen's Radio Station Operator. -- Issuable to a Class D citizen's radio station operator. For an operator who has been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the operator's official Class D citizen's radio station call letters. For an operator who has not been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the phrase "Citizen's Band Radio".

(7) Clerk of Superior Court. -- Issuable to a current or retired clerk of superior court. A plate issued to a current clerk shall bear the phrase "Clerk Superior Court" and the letter "C" followed by a number that indicates the county the clerk serves. A plate issued to a retired clerk shall bear the phrase "Clerk Superior Court, Retired", the letter "C" followed by a number that indicates the county the clerk served, and the letter "X" indicating the clerk's retired status.

(8) Coast Guard Auxiliary Member. -- Issuable to an active member of the United States Coast Guard Auxiliary. The plate shall bear the phrase "Coast Guard Auxiliary".

(9) Collegiate Insignia Plate. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a public or private college or university.

(10) Combat Veteran. -- Issuable to a veteran of the armed forces who served in a combat zone, or in waters adjacent to a combat zone,

during a period of war and who was separated from the armed forces under honorable conditions. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. A "period of war" is any of the following:

a. World War I, which began April 16, 1917, and ended November 11, 1918.
b. World War II, which began December 7, 1941, and ended December 31, 1946.
c. The Korean Conflict, which began June 27, 1950, and ended January 31, 1955.
d. The Vietnam Era, which began August 5, 1964, and ended May 7, 1975.
e. The Persian Gulf War.
f. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal.

(11) County Commissioner. -- Issuable to a county commissioner of a county in this State. The plate shall bear the words "County Commissioner" followed first by a number representing the commissioner's county and then by a letter or number that distinguishes plates issued to county commissioners of the same county. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list and a letter or number to distinguish different cars owned by the county commissioners in that county. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(12) Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a 100% service-connected disability.

(13) District Attorney. -- Issuable to a North Carolina or United States District Attorney. The plate issuable to a North Carolina district attorney shall bear the letters "DA" followed by a number that represents the prosecutorial district the district attorney serves. The plate for a United States attorney shall bear the phrase "U.S. Attorney" followed by a number that represents the district the attorney serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(13a) Eagle Scout. -- Issuable to a young man who has been certified as an Eagle Scout by the Boy Scouts of America, or to his parents or guardians. The plate shall bear the insignia of the Boy Scouts of America and shall bear the words "Eagle Scout". The Division

may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(14) 82nd Airborne Division Association Member. -- Issuable to a member of the 82nd Airborne Division Association, Inc. The plate shall bear the insignia of the 82nd Airborne Division Association, Inc. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(15) Fire Department or Rescue Squad Member. -- Issuable to an active regular member or volunteer member of a fire department, rescue squad, or both a fire department and rescue squad. The plate shall bear the words "Firefighter", "Rescue Squad", or "Firefighter-Rescue Squad".

(16) Future Farmers of America. -- Issuable to a member or a supporter of the National Future Farmers of America Organization. The plate shall bear the emblem of the organization and the letters "FFA". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(17) Historic Vehicle Owner. -- Issuable for a motor vehicle that is at least 35 years old measured from the date of manufacture. The plate for an historic vehicle shall bear the word "Antique" unless the vehicle is a model year 1943 or older. The plate for a vehicle that is a model year 1943 or older shall bear the word "Antique" or the words "Horseless Carriage", at the option of the vehicle owner.

(18) Historical Attraction Plate. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit historical attraction located in North Carolina.

(19) Honorary Plate. -- Issuable to a member of the Honorary Consular Corps, who has been certified by the U. S. State Department, the plate shall bear the words "Honorary Consular Corps" and a distinguishing number based on the order of issuance.

(20) Judge or Justice. -- Issuable to a sitting or retired judge or justice in accordance with G.S. 20-79.6.

(21) Legion of Valor. -- Issuable to a recipient of one of the following military decorations: the Congressional Medal of Honor, the Distinguished Service Cross, the Navy Cross, or the Air Force Cross. The plate shall bear the emblem and name of the recipient's decoration.

(22) Legislator. -- Issuable to a member of the North Carolina General Assembly. The plate shall bear "The Great Seal of the State of North Carolina" and, as appropriate, the word "Senate" or "House" followed by the Senator's or Representative's assigned seat number.

(23) Magistrate. -- Issuable to a North Carolina magistrate. The plate shall bear the letters "MJ" followed by a number indicating the district court district the magistrate serves, then by a hyphen, and then by a number indicating the seniority of the magistrate. The Division shall use the number "9" to designate District Court Districts 9 and 9B.

(24) March of Dimes. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the March of Dimes Foundation.

(25) Marshal. -- Issuable to a United States Marshal. The plate shall bear the phrase "U.S. Marshal" followed by a number that represents the district the Marshal serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(26) Military Reservist. -- Issuable to a member of a reserve component of the armed forces of the United States. The plate shall bear the name and insignia of the appropriate reserve component. Plates shall be numbered sequentially for members of a component with the numbers 1 through 5000 reserved for officers, without regard to rank.

(27) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(28) National Guard Member. -- Issuable to an active or a retired member of the North Carolina National Guard. The plate shall bear the phrase "National Guard". A plate issued to an active member shall bear a number that reflects the seniority of the member; a plate issued to a commissioned officer shall begin with the number "1"; a plate issued to a noncommissioned officer with a rank of E7, E8, or E9 shall begin with the number "1601"; a plate issued to an enlisted member with a rank of E6 or below shall begin with the number "3001". The plate issued to a retired or separated member shall indicate the member's retired status.

(29) Olympic Games. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the Olympic Games.

(30) Partially Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a service connected disability of less than 100%.

(31) Pearl Harbor Survivor. -- Issuable to a veteran of the armed forces of the United States who was present at and survived the attack on

Pearl Harbor on December 7, 1941. The plate will bear the phrase "Pearl Harbor Survivor" and the insignia of the Pearl Harbor Survivors' Association.

(32) Personalized. -- Issuable to the registered owner of a motor vehicle. The plate will bear the letters or letters and numbers requested by the owner. The Division may refuse to issue a plate with a letter combination that is offensive to good taste and decency. The Division may not issue a plate that duplicates another plate.

(33) Prisoner of War. -- Issuable to the following:

a. A member or veteran member of the armed forces of the United States who has been captured and held prisoner by forces hostile to the United States while serving in the armed forces.

b. The surviving spouse of a person who had a prisoner of war plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.

(34) Professional Sports Fan. -- Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of a professional sports team located in North Carolina. The Division shall receive 300 or more applications for a professional sports fan plate before a plate may be issued. The Division shall not develop a professional sports fan plate unless the professional sports team licenses, without charge, the State to use the official team logo on the plate.

(35) Purple Heart Recipient. -- Issuable to a recipient of the Purple Heart award. The plate shall bear the phrase "Purple Heart Veteran, Combat Wounded" and the letters "PH".

(36) Register of Deeds. -- Issuable to a register of deeds. The plate shall bear the words "Register of Deeds" and the letter "R" followed by a number representing the county of the register of deeds. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list.

(37) Scenic Rivers. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Scenic Rivers" and a picture representing the unique beauty of the scenic rivers of North Carolina.

(38) School Technology. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the public school system in North Carolina.

(39) Sheriff. -- Issuable to a current sheriff or to a retired sheriff who served as sheriff for at least 10 years before retiring. A plate issued to a current sheriff shall bear the word "Sheriff" and the letter "S" followed by a number that indicates the county the sheriff serves.

A plate issued to a retired sheriff shall bear the phrase "Sheriff, Retired", the letter "S" followed by a number that indicates the county the sheriff served, and the letter "X" indicating the sheriff's retired status.

(40) Soil and Water Conservation. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of water quality and environmental protection in North Carolina.

(41) Special Olympics. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the North Carolina Special Olympics.

(42) Square Dance Clubs. -- Issuable to a member of a recognized square dance organization exempt from corporate income tax under G.S. 105-130.11(a)(5). The plate shall bear a word or phrase identifying the club and the emblem of the club. The Division shall not issue a dance club plate authorized by this subdivision unless it receives at least 300 applications for that dance club plate.

(43) State Government Official. -- Issuable to elected and appointed members of State government in accordance with G.S. 20-79.5.

(44) State Attraction. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit State or federal attraction located in North Carolina.

(45) Street Rod Owner. -- Issuable to the registered owner of a modernized private passenger motor vehicle manufactured prior to the year 1949 or designed to resemble a vehicle manufactured prior to the year 1949. The plate shall bear the phrase "Street Rod". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(46) Transportation Personnel. -- Issuable to various members of the Divisions of the Department of Transportation. The plate shall bear the letters "DOT" followed by a number from 1 to 85, as designated by the Governor.

(47) U.S. Representative. -- Issuable to a United States Representative for North Carolina. The plate shall bear the phrase "U.S. House" and shall be issued on the basis of Congressional district numbers.

(48) U.S. Senator. -- Issuable to a United States Senator for North Carolina. The plates shall bear the phrase "U.S. Senate" and shall be issued on the basis of seniority represented by the numbers 1 and 2.

(49) Veterans of Foreign Wars. -- Issuable to a member or a supporter of the Veterans of Foreign Wars. The plate shall bear the words "Veterans of Foreign Wars" or "VFW" and the emblem of the

VFW. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(50) Vietnam Veteran. -- Issuable to a veteran of the armed forces of the United States who served in Vietnam. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(51) Wildlife Resources. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture representing a native wildlife species occurring in North Carolina."

Section 2. G.S. 20-63(d) reads as rewritten:

"(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer, or semitrailer shall be attached thereto, one in the front and the other in the rear: Provided, that when only one registration plate is issued for a motor vehicle other than a truck-tractor, said registration plate shall be attached to the rear of the motor vehicle. The registration plate issued for a truck-tractor shall be attached to the front thereof. Provided further, that when only one registration plate is issued for a motor vehicle and this motor vehicle is transporting a substance that may adhere to the plate so as to cover or discolor the plate or if the motor vehicle has a mechanical loading device that may damage the plate, the registration plate may be attached to the front of the motor vehicle.

Any motor vehicle of the age of 35 years or more from the date of manufacture may bear the license plates of the year of manufacture instead of the current registration plates, if the current registration plates are maintained within the vehicle and produced upon the request of any person.

The Division shall provide registered owners of motorcycles and motorcycle trailers with suitably reduced size registration plates."

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

EXPLANATION OF HOUSE BILL 1518:
Eagle Scout Special Plate (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 10, 1998
SPONSOR: Representative Eddins

House Bill 1518 does two things:

- It authorizes the issuance of a new Eagle Scout special license plate.
- It authorizes a smaller registration plate for motorcycles and motor cycle trailers.

Section 1 would authorize the Division of Motor Vehicles to develop a special registration plate issuable to a person who has been certified as an Eagle Scout by the Boy Scouts of America. The plate could also be issued to the person's parent or guardian. The plate would depict the insignia of the Boy Scouts of American and bear the words "Eagle Scout". The Division would have to receive at least 300 applications of the plate before it could be issued .

The fee for the special registration plate would be the regular motor vehicle registration fee plus an additional $10.00. The additional $10.00 fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this account, the money is distributed quarterly as follows:

Percentage	Purpose
33%	Department of Commerce for advertising travel and tourism and industrial development
50%	Department of Transportation for beautification of highways
17%	Department of Human Resources to promote Travel accessibility for disabled persons

Section 2 requires the Division to issue a smaller registration plate for motorcycles and motorcycle trailers. The current law does not specify what size a registration plate must be. It does specify what the plate must have displayed on it and it requires that the plate be of sufficient size to be plainly readable from a distance of 100 feet during daylight. The plate must have a registration number displayed on it along with the name of the State of North Carolina, the year number for which it is issued, and, for a private passenger vehicle, the words "First in Flight".

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1518

SHORT TITLE: Eagle Scout Special Plates

SPONSOR(S): Representative Eddins

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	$3000	$3000	$3000	$3000	$3000
EXPENDITURES	$856				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation - Division of Motor Vehicles.

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: The first part of the bill authorizes the Division of Motor Vehicles (DMV) to issue a special registration plate to individuals certified as Eagle Scouts, if at least 300 applications for such a plate are received. The Boy Scouts of America, or an Eagle Scout's parents or guardians, must certify the Eagle Scout standing. The second part of the bill authorizes the division to issue smaller registration plates for motorcycles and motorcycle trailers.

ASSUMPTIONS AND METHODOLOGY: The ten Boy Scout Councils in North Carolina report that, combined, they award approximately 1,100 Eagle Scouts rankings per year. Because there is no way to determine how many of the North Carolina Eagle Scouts will request the special plate, this fiscal note assumes the issuance of the minimum 300 license plates in FY 1998-99. The note also assumes that those plates will be renewed in the following years.

According to the Division of Motor Vehicles and the Department of Corrections, there is a one time cost of $100 to design the new plate. There is also a production cost of $2.52 per plate

(This assumes a basic one color design. If the design is more complex, or requires more color, the per plate cost increases).-The total production cost for 300 basic plates is $856.00. Special Registration Plate Account funds will be used to cover this expense. In addition to the normal $20.00 registration fee every owner of a private passenger vehicle pays, there is a $10.00 fee for each specialized Eagle Scout plate. Funds from the $10.00 special plate fee are deposited in the Special Registration Plate Account.

The Division of Motor Vehicles does not anticipate a significant fiscal impact to making smaller plates available for motorcycles and motorcycle trailers.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY: Tom Covington

DATE: July 10, 1998

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1518 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIVISIOIN OF MOTOR VEHICLES TO ISSUE EAGLE SCOUT SPECIAL REGISTRATION PLATES TO EAGLE SCOUTS OR THEIR PARENTS OR GUARDIANS AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE SMALLER REGISTRATION PLATES FOR MOTORCYCLES AND MOTORCYCLE TRAILERS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1544*
Committee Substitute Favorable 6/30/98

Short Title: Raise Court Fees. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PROCESS AND FACILITIES FEES IN THE GENERAL COURT OF JUSTICE.

The General Assembly of North Carolina enacts:

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

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

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

(2) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve dollars ($12.00) in the district court, 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 ($15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the

defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

(6) For support of the General Court of Justice, for the issuance by the clerk of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2, the sum of fifty dollars ($50.00), to be remitted to the State Treasurer. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee."

Section 2. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve dollars ($12.00) in cases heard before a magistrate, and the sum of ~~ten dollars ($10.00)~~ sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which 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 in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of fifty-five dollars ($55.00) in the superior court, and the sum of forty dollars ($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 shall be remitted to the State Treasurer."

Section 3. G.S. 7A-306(a) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00)~~ ten dollars ($10.00) to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(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 shall be remitted to the State Treasurer."

Section 4. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00),~~ ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(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 collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ten dollars ($10.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of fifteen dollars ($15.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of seventeen dollars ($17.00)."

Section 5. G.S. 7A-311(a) reads as rewritten:

"(a) In a civil action or special proceeding, the following fees and commissions shall be assessed, collected, and remitted to the county:

(1) a. ~~Effective October 1, 1990, for~~ For every civil action filed on or after that date, for each item of civil process, including summons, subpoenas, notices, motions, orders, writs and pleadings served, the sum of ~~five dollars ($5.00).~~ ten dollars ($10.00). When two or more items of civil process are served simultaneously on one party, only one ~~five dollar ($5.00)~~ ten dollar ($10.00) fee shall be charged.

b. When an item of civil process is served on two or more persons or organizations, a separate service charge shall be made for each person or organization. If the process is served, or attempted to be served, by a city policeman, the fee shall be remitted to the city rather than the county. If the process is served, or attempted to be served by the sheriff, the fee shall be remitted to the county. This subsection shall not apply to service of summons to jurors.

(2) For the seizure of personal property and its care after seizure, all necessary expenses, in addition to any fees for service of process.

(3) For all sales by the sheriff of property, either real or personal, or for funds collected by the sheriff under any judgment, five percent (5%) on the first five hundred dollars ($500.00), and two and one-half percent (2 1/2%) on all sums over five hundred dollars ($500.00), plus necessary expenses of sale. Whenever an execution is issued to the sheriff, and subsequently while the execution is in force and outstanding, and after the sheriff has served or attempted to serve such execution, the judgment, or any part thereof, is paid directly or indirectly to the judgment creditor, the fee herein is payable to the sheriff on the amount so paid. The judgment creditor shall be responsible for collecting and paying all execution fees on amounts paid directly to the judgment creditor.

(4) For execution of a judgment of ejectment, all necessary expenses, in addition to any fees for service of process.

(5) For necessary transportation of individuals to or from State institutions or another state, the same mileage and subsistence allowances as are provided for State employees."

Section 6. This act becomes effective October 1, 1998, and applies to fees assessed or paid on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1544

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1544-ARB-1 Page 1 of __

Date_____,1998

Comm. Sub. []
Amends Title []
Second Edition

Representative _____

moves to amend the bill on page 5, lines 8 and 9, by rewriting the lines to read:

"(1) a. ~~Effective October 1, 1990, for every civil action filed on or after that date, for~~ For each item of civil ~~process,~~ process served, including";

and on page 5, line 11, by rewriting the line to read:

"~~pleadings served,~~ pleadings, the sum of ~~five dollars ($5.00).~~ ten dollars".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

EXPLANATION OF HOUSE BILL 1544:
Raise Court Fees (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 13, 1998
SPONSOR: Rep. Gardner

House Bill 1544 increases the court fees that are payable to the municipalities and counties to assist them in covering the costs of maintaining judicial facilities. The bill is supported by the Association of County Commissioners and requested by several counties. The current fees cover 15% or less of the counties' and municipalities' costs of maintaining the judicial facilities. The bill becomes effective October 1, 1998, and applies to fees assessed or paid on or after that date.

Service of process fees. Sections 1 and 5 of the bill increase the fee for service of criminal and civil processes from $5 to $10. These fees were last increased from $4 to $5 in 1990. The fees are remitted to the county where the process was served except in those cases in which the process was served by a municipal law enforcement officer. In those cases, the fee is payable to the municipality.

Facilities fees. Sections 1, 2, 3, and 4 of the bill increase the facilities fee by $6. Funds derived from the facilities fees must be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities. If the funds derived from the facilities fees exceed what is needed for this purpose, a county or municipality may, with the approval of the Administrative Office of the Courts, use the excess funds to retire outstanding indebtedness incurred in the construction of judicial facilities, to reimburse the county or municipality for renovations made to the facilities within the past two years, or to supplement the operations of the judicial system in the county.

The specific increased fee amounts are as follows:

1.	Magistrate, criminal cases:	$12
2.	District Court, criminal cases:	$12
3.	Superior Court, criminal cases:	$30
4.	Magistrate, civil cases:	$12
5.	District Court, civil cases:	$16
6.	Superior Court, civil cases:	$16
7.	Superior Court, special proceedings:	$10
8.	Administration of estates, etc.:	$10

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1544 (Committee Substitute adopted 6/30/98)

SHORT TITLE: Raise Court Fees

SPONSOR(S): Representative Gardner

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
Revenues from increasing criminal and civil case fees distributed to counties and municipalities:					
Criminal Service Fee	$4,371,887	$5,945,769	$6,064,685	$6,185,979	$6,309,700
Criminal Facilities Fee	$4,754,570	$6,466,212	$6,595,536	$6,727,447	$6,861,994
Subtotal	$9,126,457	$12,411,981	$12,660,221	$12,913,426	$13,171,694
Civil Service Fee	$1,672,751	$2,274,942	$2,320,439	$2,366,849	$2,414,187
Civil Facilities Fee	$2,271,834	$3,089,694	$3,151,488	$3,214,518	$3,278,808
Subtotal	$3,944,585	$5,364,636	$5,471,927	$5,581,367	$5,692,995
Total	**$13,071,042**	**$17,776,617**	**$18,132,148**	**$18,494,793**	**$18,864,689**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Department; County and Municipal Finance Offices

EFFECTIVE DATE: October 1, 1998. Applies to fees assesses or paid on or after that date.

BILL SUMMARY: *TO INCREASE THE PROCESS AND FACILITIES FEES IN THE GENERAL COURT OF JUSTICE.* This bill first amends G.S. 7A-304(a) by increasing the following fees in criminal court cases: 1) arrest and processing service fee from $5 to $10; 2) district court facilities fee from $6 to $12; and 3) superior court facilities fee from $24 to $30. Process and facilities fees for criminal cases are remitted directly to counties and municipalities for court related expenses. Applies to fees assessed or paid on after the effective date.

House Judiciary II Committee adopts following changes to bill:
Increases the following fees for civil court cases: 1) processing service fee from $5 to $10 (G.S. 7A-311(a)), 2) facilities fee for civil actions before a magistrate from $6 to $12 (G.S. 7A-305(a)), 3) facilities fee for civil actions in district and superior court from $10 to $16 (G.S. 7A-305(a)),

and 4) facilities fees for special proceedings and estates cases from $4 to $10 (G.S. 7A-306(a), 307(a)). If two or more civil actions are served simultaneously on one party, only one $10 processing service fee will be charged. Process and facilities fees for civil cases are remitted directly to counties and municipalities for court related expenses.

ASSUMPTIONS AND METHODOLOGY: Judicial Department

Criminal Cases

The first section of this bill increases service and facilities fees associated with criminal court fees. For the criminal service fee, Judicial Department data for FY 1996-97 indicates that there were 1,600,808 total cases involving processing service fees. Of these 1,600,808 cases, an estimated 1,120,566, or 70%, were criminal cases subject to this provision. Raising this service fee from $5 to $10 would have increased revenues by $5,602,830 in FY 1996-97. Extrapolating to future years using a conservative estimate of 2% growth in new criminal cases per year, we project the following annual revenue increases by raising district and superior court service fees:

FY 1998-99*	1,165,837 cases	$5,829,183
FY 1999-00	1,189,154 cases	$5,945,769
FY 2000-01	1,212,937 cases	$6,064,685
FY 2001-02	1,237,196 cases	$6,185,979
FY 2002-03	1,261,940 cases	$6,309,700

***Since effective date is October 1, 1998, the actual revenue increase for FY 1998-99 would be $4,371,887 (874,378 cases)**

For the criminal facilities fee, Judicial Department data for FY 1996-97 indicates that there were 997,017 criminal cases in district courts and 18,526 criminal cases in superior courts (1,015,543 total cases). Raising the district court facilities fee from $6 to $12 would have increased revenues by $5,982,102, while raising the superior court facilities fee from $24 to $30 would have increased revenues by $111,156. The total revenues gained by increasing the facilities fees would have been $6,093,258. Extrapolating to future years using a conservative estimate of 2% growth in new criminal cases per year, we project the following annual revenue increases from raising the district and superior court facilities fees:

FY 1998-99*	1,056,571 cases	$6,339,426
FY 1999-00	1,077,702 cases	$6,466,212
FY 2000-01	1,099,256 cases	$6,595,536
FY 2001-02	1,121,241 cases	$6,727,447
FY 2002-03	1,143,666 cases	$6,861,994

***Since effective date is October 1, 1998, the actual revenue increase for FY 1998-99 would be $4,754,570 (792,428 cases)**

Civil Cases

The next section of the bill raises the service and facilities fees associated with civil actions[1]. For the civil service fees, as indicated earlier, there were a total of 1,600,808 cases that involved processing service fees in FY 1996-97. Of these 1,600,808 cases, an estimated 428,746 cases, or 26%, were civil actions or special proceedings subject to this section. Raising the service fee from $5 to $10 would have increased revenues by $2,143,730 in FY 1996-97. Extrapolating to future years using a conservative estimate of 2% growth in new civil actions and per year, we project the following annual revenue increases from raising civil service fees:

FY 1998-99*	446,067 cases	$2,230,337
FY 1999-00	454,988 cases	$2,274,942
FY 2000-01	464,088 cases	$2,320,439
FY 2001-02	473,370 cases	$2,366,849
FY 2002-03	482,837 cases	$2,414,187

***Since effective date is October 1, 1998, the actual revenue increase for FY 1998-99 would be $1,672,751 (334,550 cases)**

For the civil and estates facilities fees, Judicial Department data for FY 1996-97 indicated that there were 271,994 civil cases heard before a magistrate, 105,389 cases in district court and 21,807 cases in superior court, 29,106 special proceedings, and 56,952 estates cases (485,248 total cases). Raising the magistrate facilities fee from $6 to $12 would have increased revenues by $1,631,964, while raising the district and superior facilities fee for civil cases from $10 to $16 would have increased revenues by a combined $765,876 ($635,034 from district court and $130,842 from superior). Raising the special proceedings and estates facilities fees from $4 to $10 would bring in an additional $516,348 ($174,636 from special proceedings and $341,712 from estates cases). The total revenues gained by increasing the facilities fees would have been $2,914,188. Extrapolating this revenue increase to future years using a conservative estimate of 2% growth in new civil actions and estates cases, we project the following revenue increases from raising the civil and estates facilities fees:

FY 1998-99*	504,852 cases	$3,029,112
FY 1999-00	514,949 cases	$3,089,694
FY 2000-01	525,248 cases	$3,151,488
FY 2001-02	535,753 cases	$3,214,518
FY 2002-03	546,468 cases	$3,278,808

***Since effective date is October 1, 1998, the actual revenue increase for FY 1998-99 would be $2,271,834 (378,639 cases)**

SOURCES OF DATA: Judicial Department

TECHNICAL CONSIDERATIONS: None

[1] Civil actions are defined here as civil cases before a magistrate or in district or superior court, and special proceedings.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Matt Bronson and Charles Perusse
APPROVED BY: Tom Covington

DATE: July 1, 1998

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1544

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1544-ARB-1

Date_____,1998

Comm. Sub. [ ]
Amends Title [ ]
Second Edition

Representative_____

moves to amend the bill on page 5, lines 8 and 9, by rewriting the lines to read:

"(1) a. ~~Effective October 1, 1990, for every civil action filed on or after that date, for~~ For each item of civil ~~process,~~ process served, including";

and on page 5, line 11, by rewriting the line to read:

"~~pleadings served,~~ pleadings, the sum of ~~five dollars ($5.00).~~ ten dollars".

SIGNED C Buchanan
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1544*
Committee Substitute Favorable 6/30/98
Proposed Committee Substitute H1544-PCS7496-RB

Short Title: Raise Court Fees. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PROCESS AND FACILITIES FEES IN THE GENERAL COURT OF JUSTICE.

The General Assembly of North Carolina enacts:

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

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

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

(2) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve dollars ($12.00) in the district court, 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 ($15.00) to be remitted to the county providing the pretrial release

services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

(6) For support of the General Court of Justice, for the issuance by the clerk of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2, the sum of fifty dollars ($50.00), to be remitted to the State Treasurer. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee."

Section 2. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~six dollars ($6.00)~~ twelve dollars ($12.00) in cases heard before a magistrate, and the sum of ~~ten dollars ($10.00)~~ sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which 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 in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of fifty-five dollars ($55.00) in the superior court, and the sum of forty dollars ($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 shall be remitted to the State Treasurer."

Section 3. G.S. 7A-306(a) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00)~~ ten dollars ($10.00) to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(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 shall be remitted to the State Treasurer."

Section 4. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ~~four dollars ($4.00),~~ ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(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 collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ten dollars ($10.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of fifteen dollars ($15.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of seventeen dollars ($17.00)."

Section 5. G.S. 7A-311(a) reads as rewritten:

"(a) In a civil action or special proceeding, the following fees and commissions shall be assessed, collected, and remitted to the county:

(1) a. ~~Effective October 1, 1990, for every civil action filed on or after that date, for~~ For each item of civil ~~process,~~ process served, including summons, subpoenas, notices, motions, orders, writs and ~~pleadings served,~~ pleadings, the sum of ~~five dollars ($5.00).~~ ten dollars ($10.00). When two or more items of civil process are served simultaneously on one party, only one ~~five dollar ($5.00)~~ ten dollar ($10.00) fee shall be charged.

b. When an item of civil process is served on two or more persons or organizations, a separate service charge shall be made for each person or organization. If the process is served, or attempted to be served, by a city policeman, the fee shall be remitted to the city rather than the county. If the process is served, or attempted to be served by the sheriff, the fee shall be remitted to the county. This subsection shall not apply to service of summons to jurors.

(2) For the seizure of personal property and its care after seizure, all necessary expenses, in addition to any fees for service of process.

(3) For all sales by the sheriff of property, either real or personal, or for funds collected by the sheriff under any judgment, five percent (5%) on the first five hundred dollars ($500.00), and two and one-half percent (2 1/2%) on all sums over five hundred dollars ($500.00), plus necessary expenses of sale. Whenever an execution is issued to the sheriff, and subsequently while the execution is in force and outstanding, and after the sheriff has served or attempted to serve such execution, the judgment, or any part thereof, is paid directly or indirectly to the judgment creditor, the fee herein is payable to the sheriff on the amount so paid. The judgment creditor shall be responsible for collecting and paying all execution fees on amounts paid directly to the judgment creditor.

(4) For execution of a judgment of ejectment, all necessary expenses, in addition to any fees for service of process.

(5) For necessary transportation of individuals to or from State institutions or another state, the same mileage and subsistence allowances as are provided for State employees."

Section 6. This act becomes effective October 1, 1998, and applies to fees assessed or paid on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1544 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PROCESS AND FACILITIES FEES IN THE GENERAL COURT OF 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 (# 2), ~~☐ which changes the title,~~ unfavorable as to original bill (Committee Substitute Bill # 2), ~~(and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

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

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

☐ 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)

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

July 14, 1998
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	NC Association of County Commissioners
Patrice Roesler	"
Alice Garland	Electric Cities
John D. Cuaderes	LEGGett & Platt, Incorporated Carthage, MO 64836
SAM JOHNSON	ATTY
Diane Johnson	DMV - Veh Reg
Matt Osborne	AOC
Dary Rogers	NCDOT
Natalie Haskins	Charlotte Chamber
Richard Bynum	Maupin, Taylor & Ellis
Kelly Perry	Maupin Taylor & Ellis
R. Paul Wilms	NCHBA

VISITOR REGISTRATION SHEET

Horse Pasture

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John May	NC CWA
Paul Zogin	OSBM
Joyce Rogers	JP Assoc/ Electricities
Tim Minor	NC HBA

MINUTES

HOUSE COMMITTEE ON FINANCE

THURSDAY, JULY 9, 1998

8:30 A.M. ROOM 544-LOB

Rep. Gray called the meeting to order and introduced the Pages and staff.

SB-649 LOBBYIST PENALTY

Chairman Gray announced that it wasn't ready for discussion from the sub-sub-committee.

HB-1429 INSURANCE REG. CHARGE/COMPANY EXAMS

Rep. Brawley moved for adoption of the Proposed Committee Substitute for discussion. So moved. Rep. C. Wilson explained the bill. Rep. Dickson questioned the reserve fund, how much is available and its purpose. Mr. Dascheil Propes, Department of Insurance, responded. Rep. Hackney asked for an explanation of Section 3 and Mr. Bill Hale, Department of Insurance answered his inquiry. Rep. Brawley questioned the out of state audit. Mr. Hale responded and Rep. Brawley moved for a favorable report, unfavorable as to the original bill. Rep. Goodwin questioned Section 8 and Mr. Hale answered him also. Mr. Propes gave an additional explanation. Rep. Starnes asked if this was a premium increase. Mr. Hale responded. Rep. Miller questioned Section 1 regarding public utility. Ms. Cindy Avrette, Research Division and Ms. Linda Millsap, Fiscal Research Division, responded. Having no further discussion, the vote was taken and given a favorable report, unfavorable to the original bill.

The meeting adjourned at 9:00 a.m.

Rep. Gray, Chairman

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

THURSDAY, JULY 9, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. C. Wilson

BILLS FOR DISCUSSION:

HB-1429	Insurance Reg. Charge/Company Exams	Rep. C. Wilson
SB-649	Lobbyist Penalty	Sen. Miller

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1429*
Committee Substitute Favorable 6/24/98
Proposed Committee Substitute H1429-PCSX3154-RB1

Short Title: Set Reg. Fees/Company Exams. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEE, TO SET THE INSURANCE REGULATORY CHARGE FOR CALENDAR YEAR 1998, TO AMEND PROVISIONS IN THE INSURANCE LAWS DEALING WITH EXAMINATIONS OF INSURANCE COMPANIES AND AUDITS OF THEIR FINANCIAL STATEMENTS, AND TO CLARIFY THE LAW ON INSURERS' FUNDING AGREEMENT RESERVES.

The General Assembly of North Carolina enacts:

Section 1. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1998.

Section 2. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six percent (6%) for the 1998 calendar year.

Section 3. G.S. 58-7-50(d) reads as rewritten:

"(d) This section is subject to the exceptions provided in G.S. 58-7-55. The Commissioner may allow a domestic insurer to maintain certain records or assets outside this State."

Section 4. G.S. 58-2-131(a) reads as rewritten:

"(a) This section and G.S. 58-2-132 ~~and G.S. 58-2-133~~ through G.S. 58-2-134 shall be known and may be cited as the Examination Law. The purpose of the Examination Law is to provide an effective and efficient system for examining the

activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the Commissioner's jurisdiction; and to enable the Commissioner to use a flexible system of examinations that directs resources that are appropriate and necessary for the administration of the insurance statutes and rules of this State."

Section 5. G.S. 58-2-131(b) reads as rewritten:

"(b) As used in this ~~section, G.S. 58-2-132 and G.S. 58-2-133,~~ section and G.S. 58-2-132 through G.S. 58-2-134, unless the context clearly indicates otherwise:

(1) "Commissioner" includes an authorized representative or designee of the Commissioner.

(2) "Examination" means an examination conducted under the Examination Law.

(3) "Examiner" means any person authorized by the Commissioner to conduct an examination.

(4) "Insurance regulator" means the official or agency of another jurisdiction that is responsible for the regulation of a foreign or alien insurer.

(5) "Person" includes a trust or any affiliate of a person."

Section 6. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-2-134. Cost of certain examinations.**

An insurer shall reimburse the Department for the actual expenses incurred by the Department in any examination of those records or assets conducted pursuant to G.S. 58-2-131, 58-2-132, or 58-2-133 when:

(1) The insurer maintains part of its records or assets outside this State under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets outside this State.

(2) The insurer requests an examination of its records or assets.

(3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business.

The amount paid by an insurer for an examination of records or assets shall not exceed one hundred thousand dollars ($100,000), unless the insurer and the Commissioner agree on a higher amount."

Section 7. G.S. 58-7-16(f) reads as rewritten:

"(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

(1) Standards to be followed in the approval of forms of funding agreements.

(2) Reserves to be maintained by insurers issuing funding agreements.

(3) Accounting and reporting of funds credited under funding agreements.

(4) Disclosure of information to be given to holders and prospective holders of funding agreements.

(5) Qualification and compensation of persons selling funding agreements on behalf of insurers.

In determining minimum valuation reserves to be maintained by insurers issuing funding agreements, the Commissioner may use any relevant actuarial guideline, regulation, interpretation, or paper published by the Society of Actuaries or the American Academy of Actuaries that the Commissioner considers reasonable."

Section 8. G.S. 58-2-131(d) reads as rewritten:

"(d) The Commissioner may conduct an examination of any insurer whenever the Commissioner deems it to be prudent for the protection of policyholders but shall at a minimum conduct ~~an~~ a regular examination of every domestic insurer not less frequently than once every ~~three~~ five years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook."

Section 9. G.S. 58-2-205 reads as rewritten:

"**§ 58-2-205. CPA audits of financial statements.**

The Commissioner ~~is authorized to~~ may adopt rules to provide for audits and opinions of insurers' financial statements by certified public accountants. ~~Such~~ These rules shall be ~~in accordance with~~ substantially similar to the NAIC model rule that requires audited financial reports, as amended. The Commissioner may adopt, amend, or repeal provisions of these rules under G.S. 150B-21.1 in order to keep these rules current with the NAIC model rule."

Section 10. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Commissioner of Insurance may adopt a temporary rule to implement the provisions of G.S. 58-2-205 after prior notice or hearing or upon any abbreviated notice or hearing. When the Commissioner adopts a temporary rule pursuant to this subsection, the Commissioner must submit the reference to this subsection as the Commissioner's statement of need to the Codifier of Rules."

Section 11. Section 1 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1429*
Committee Substitute Favorable 6/24/98

Short Title: Insurance Reg. Charge/Company Exams. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO SET THE INSURANCE REGULATORY CHARGE FOR CALENDAR YEAR 1998, TO AMEND PROVISIONS IN THE INSURANCE LAWS DEALING WITH EXAMINATIONS OF INSURANCE COMPANIES AND AUDITS OF THEIR FINANCIAL STATEMENTS, AND TO CLARIFY THE LAW ON INSURERS' FUNDING AGREEMENT RESERVES.

The General Assembly of North Carolina enacts:

Section 1. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is eight and seventy-five hundredths percent (8.75%) for the 1998 calendar year.

Section 2. G.S. 58-7-50(d) reads as rewritten:

"(d) This section is subject to the exceptions provided in G.S. 58-7-55. The Commissioner may allow a domestic insurer to maintain certain records or assets outside this State."

Section 3. G.S. 58-2-131(a) reads as rewritten:

"(a) This section and G.S. 58-2-132 ~~and G.S. 58-2-133~~ through G.S. 58-2-134 shall be known and may be cited as the Examination Law. The purpose of the Examination Law is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the Commissioner's jurisdiction; and to enable the Commissioner to use a flexible system of examinations that directs resources that are appropriate and necessary for the administration of the insurance statutes and rules of this State."

Section 3.1. G.S. 58-2-131(b) reads as rewritten:

"(b) As used in this ~~section, G.S. 58-2-132 and G.S. 58-2-133,~~ section and G.S. 58-2-132 through G.S. 58-2-134, unless the context clearly indicates otherwise:

(1) "Commissioner" includes an authorized representative or designee of the Commissioner.

(2) "Examination" means an examination conducted under the Examination Law.

(3) "Examiner" means any person authorized by the Commissioner to conduct an examination.

(4) "Insurance regulator" means the official or agency of another jurisdiction that is responsible for the regulation of a foreign or alien insurer.

(5) "Person" includes a trust or any affiliate of a person."

Section 4. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-2-134. Cost of certain examinations.**

An insurer shall reimburse the Department for the actual expenses incurred by the Department in any examination of those records or assets conducted pursuant to G.S. 58-2-131, 58-2-132, or 58-2-133 when:

(1) The insurer maintains part of its records or assets outside this State under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets outside this State.

(2) The insurer requests an examination of its records or assets.

(3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business.

The amount paid by an insurer for an examination of records or assets shall not exceed one hundred thousand dollars ($100,000), unless the insurer and the Commissioner agree on a higher amount."

Section 5. G.S. 58-7-16(f) reads as rewritten:

"(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

(1) Standards to be followed in the approval of forms of funding agreements.

(2) Reserves to be maintained by insurers issuing funding agreements.

(3) Accounting and reporting of funds credited under funding agreements.

(4) Disclosure of information to be given to holders and prospective holders of funding agreements.

(5) Qualification and compensation of persons selling funding agreements on behalf of insurers.

In determining minimum valuation reserves to be maintained by insurers issuing funding agreements, the Commissioner may use any relevant actuarial guideline, regulation, interpretation, or paper published by the Society of Actuaries or the American Academy of Actuaries that the Commissioner considers reasonable."

Section 6. G.S. 58-2-131(d) reads as rewritten:

"(d) The Commissioner may conduct an examination of any insurer whenever the Commissioner deems it to be prudent for the protection of policyholders but shall at a minimum conduct ~~an~~ a regular examination of every domestic insurer not less frequently than once every ~~three~~ five years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook."

Section 7. G.S. 58-2-205 reads as rewritten:

"**§ 58-2-205. CPA audits of financial statements.**

The Commissioner ~~is authorized to~~ may adopt rules to provide for audits and opinions of insurers' financial statements by certified public accountants. ~~Such~~ These rules shall be ~~in accordance with~~ substantially similar to the NAIC model rule that requires audited financial reports, as amended. The Commissioner may adopt, amend, or repeal provisions of these rules under G.S. 150B-21.1 in order to keep these rules current with the NAIC model rule."

Section 8. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Commissioner of Insurance may adopt a temporary rule to implement the provisions of G.S. 58-2-205 after prior notice or hearing or upon any abbreviated notice or hearing. When the Commissioner adopts a temporary rule pursuant to this subsection, the Commissioner must submit the reference to this subsection as the Commissioner's statement of need to the Codifier of Rules."

Section 9. This act becomes effective July 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1429

SHORT TITLE: Set Reg. Fees/Company Exams

SPONSOR(S): Representative Wilson

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

(Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Utilities Special Fund	8.34	($.51 million increase over FY 1997-98)			
Insurance Regulatory Fund	19.20	($1.09 million increase over FY 1997-98)			
General Fund - Exam. Fees		$100,000 every five years			
EXPENDITURES:					
General Fund - Exam. Fees		Equal to the cost of examination.			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance, North Carolina Utilities Commission and Public Staff.

EFFECTIVE DATE: Section 1 of this act becomes effective July 1, 1998. The remainder becomes effective when it becomes law.

BILL SUMMARY: This bill has several parts. Section 1 sets the percentage rate used in calculating the public utilities regulatory fee at 0.09% of each public utility's North Carolina revenues. Section 2 sets the insurance regulatory charge at 6% of the total insurance premiums tax liability. Section 3 expands the types of records and assets an insurance company can maintain outside the state. Sections 4 through 6 modify the "Examination Law" to require the examined insurer to reimburse the Department of Insurance for the actual expenses related to the examination when 1) the insurer maintains part of its records or assets outside of the state, 2) the insurer requests an examination of its records or assets, or 3) the insurer is impaired, insolvent, or unlikely to meet their known financial obligations. The bill caps the reimbursement at $100,000, unless the Insurance Commissioner and the insurer agree on a higher amount. Section 7 provides guidance to the Insurance Commissioner on the types of information used to determine minimum

valuation reserves. Section 8 instructs the Commissioner to conduct a regular examination of insurers at least once every five years. (Currently the statute requires an examination once every three years). Section 9 authorizes the Insurance Commissioner to adopt rules for audits and opinions that are substantially similar to the NAIC model rule, and lets the Commissioner change the Departments rules to reflect changes in the NAIC model rule. Section 10 modifies the Commissioner's ability to adopt temporary rules. Section 11 sets the effective dates.

ASSUMPTIONS AND METHODOLOGY:

Section 1: Utilities Commission and Public Staff Fund

Section one of the bill sets the utilities regulatory fee at 0.09% of each public utilities' North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1998. **(This maintains the current 0.09% rate set in fiscal year 1997-98.)** The revenue generated from this fee supports the operations of the North Carolina Utilities Commission and Public Staff.

Per G.S. 62-302(b)(2), the percentage rate established by the General Assembly and assessed by the Commission "may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund." Combined operations of the Commission and the Public Staff in FY 1998-99 will require expenditures of not less than $9,297,845. Revenues generated by the utilities regulatory fee will amount to $8,340,000. The balance will be derived from other revenues generated by Commission fees and charges, or from the Accumulated Fee Margin Reserve Account.

The Utilities Commission indicates that the status of the Accumulated Fee Margin Reserve is as follows:

Balance as of 6/30/98	$ 8,990,813
Add: Estimated Collections and Interest for FY 1998-99	$ 9,356,285
Total Funds Available	$18,347,098
Less: Estimated FY 1998-99 Expenditures Reimbursable from Fees	($9,297,845)*
Estimated Margin Reserve for Period Ending 6/30/99	$ 9,049,253

** Not included in FY 1997-98 and 1998-99 are the estimated costs incurred by the Legislative Study Commission on the Future of Electric Service in North Carolina. Study Commission expenses are to be refunded from the Utilities Commission and Public Staff Fund (Chapter 483, Section 10.1, 1997 Session Laws). The amount is expected to be in excess of $450,000.*

Based on the projected Fee Margin Reserve, the fee of 0.09% should be sufficient to cover the operations of the Utilities Commission and Public Staff.

Section 2: Insurance Regulatory Fund

Section two of the act sets the insurance regulatory charge effective for calendar year 1998 at 6.0%. (This is a decrease from the 8.75% rate established for calendar year 1997.) The charge is based on a percentage of a company's premiums tax liability for the taxable year. Every insurance company subject to the premiums tax levied under G.S. 105-228.5 must pay the insurance regulatory charge. The percentage rate, set annually, cannot exceed the rate necessary to generate funds sufficient to defray the estimated cost of operating the Department of Insurance for the upcoming year. The revenue collected from the charge is deposited into the Insurance Regulatory Fund invested with the State Treasurer and managed by the Office of State Budget and Management. Funds generated by the regulatory charge are used to reimburse the General Fund for the amount appropriated to the Department of Insurance.

	FY 1996-97	FY 1997-98	FY 1998-99
Estimated Gross Premiums Tax	$208 mil.	$207 mil.	$320 mil.
Insurance Regulatory Charge	x .075	x .0875	x. 060
	$15.08 mil.	$18.11 mil.	$19.2 mil.

If the gross premiums tax continues to increase through calendar year 1998 then, it is possible the rate for 1999 could be less than the proposed 6.0% rate for 1998.

Sections 3-10: Insurance Examination Fees/Regulations

The proposed act expands the types of records and assets an insurance company can maintain outside the State. Under G.S. 58-7-55, certain exemptions exist that allow a domestic insurance company to maintain financial and accounting records outside the State so long as a company makes a written request and the Commissioner approves.

In the event approval is given to a company to hold certain records and assets outside the State the Commissioner of Insurance can charge for the examination of records in certain circumstances. An insurance company can be required to pay up to $100,000 of the Department's cost of examinations when the insurer maintains part of its records and or assets out of the State, when the insurer requests the Department examine its records, and when an insurer's solvency is in question. The cost can exceed $100,000 if the insurer and the Commissioner agree to a greater amount.

The Commissioner of Insurance is given the authority to regulate the issuance and sale of funding agreements in G.S. 58-7-16(f). Section 5 of this act, allows the Commissioner to use any relevant actuarial guidelines, regulations, interpretations or papers published by the Society of Actuaries or the American Academy of Actuaries in carrying out his authority to determine minimum valuation reserves to be maintained by the issuer.

The Department of Insurance does not expect many domestic companies to take advantage of this regulatory change except in certain circumstances. There is expected to be at least one that

would be subject to this act within a three year period. Data provide by the Department of Insurance.

TECHNICAL CONSIDERATIONS: Lengthening the maximum period between required examinations of insurance companies may have an impact on staffing and other Department of Insurance needs. However, the Department hopes to use this opportunity to pursue other matters such as participating in "foreign exams".

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk, Jennifer Herrera, and Linda Struyk Millsaps.
APPROVED BY:
DATE: July 8, 1998

EXPLANATION OF HOUSE BILL 1429:
Proposed Committee Substitute
Set Reg. Charge/Company Exams

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: May 27, 1997
SPONSOR: Rep. Connie Wilson

The proposed committee substitute for House Bill 1429 differs from the original bill in two ways:

- It sets the public utility regulatory fee at 0.09%.
- It lowers the insurance regulatory charge from 8.75% to 6%.

The bill also makes the following changes to the insurance laws:

- It allows domestic insurers to maintain part of their records or assets outside the State.
- It provides that the Department of Insurance may bill an insurance company for an examination of those records and assets maintained outside the State.
- It permits the Commissioner of Insurance to use relevant actuarial guidelines to help determine the appropriate level of reserves to be maintained by insurers issuing funding agreements.
- It changes the schedule for regular examinations of North Carolina domestic insurers from 3 years to 5 years.
- It allows the Commissioner to make changes in the existing CPA audit rules under the APA's temporary rulemaking provisions.

Public Utility Regulatory Fee

Section 1 sets the public utility regulatory fee for fiscal year 1998-99 at 0.09%. This rate maintains the current 0.09% rate set in fiscal year 1997-98. The utility regulatory fee was imposed in 1989. Its purpose is to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

Insurance Regulatory Charge

Section 2 decreases the insurance regulatory charge from 8.75% to 6%. Last year, the General Assembly clarified that the premiums tax liability upon

which the charge is levied is not reduced by any tax credits allowed a taxpayer for guaranty or solvency fund assessments. This change explains in part the reason why the charge is able to be decreased this fiscal year by 2.75%.

This charge was first imposed in 1991. Its purpose is to make the Department of Insurance receipt-supported and thereby eliminate General Fund support of the Department. The regulatory charge is imposed on insurance companies that pay the gross premiums tax, other than service corporations such as Blue Cross/Blue Shield and Delta Dental Corporation. Health maintenance organizations do not pay the regulatory charge because they do not pay the gross premiums tax. The charge is a percentage of the insurance company's premiums tax liability.

In 1995, the General Assembly eliminated the insurance audit and examination fees for insurance companies, HMOs, medical corporations, and guaranty associations. The revenue generated by these audit fees was an estimated $4.5 million annually. Consequently, the costs of the audits is now paid for by the insurance regulatory charge as part of the costs of regulating the insurance industry.

Insurance Provisions

Section 3 amends the law that requires every North Carolina insurance company to maintain its records and assets in this State by making it clear that the Commissioner may permit a domestic insurer to maintain a part of its records or assets outside North Carolina.

Sections 4 and 5 are technical. They amend two statutory provisions to include a cross-reference to the new statute section in Section 5 of the bill.

Section 6 adds a new section to the Examination Law that would provide that the Department of Insurance may bill an insurance company for an examination of its records and assets, up to a maximum billing of $100,000 (unless there is a mutual agreement for a higher amount), in only three situations:

1. When a North Carolina insurer keeps records and assets out of North Carolina and the Department needs to examine those out-of-state records or assets.
2. When an insurer requests an examination, usually this happens when another company wants to acquire or merge with the insurer and the insurer wants an official "stamp of approval" on its financial situation.

3. When an insurer is financially unstable. The last item is important because intervention by the Department through an examination can keep the insurer from becoming insolvent, thus avoiding a liquidation and assessments by a guaranty fund on all other insurers. Billing an impaired insurer does not cause further deterioration in the insurer's financial situation.

Section 7 amends the law that gives the Commissioner authority to regulate the issuance and sale of funding agreements. In determining the appropriate level of reserves to be required by the Commissioner, the Commissioner's actuarial staff has determined that the statute should reference and permit the Commissioner to use relevant guidelines published by the Society of Actuaries or the American Academy of Actuaries, when determined by the Commissioner to be reasonable.

Section 8 changes the schedule for regular examinations of domestic insurers from at least once every three years to every five years.

Section 9 allows the Commissioner to adopt rules that are substantially similar to the National Association of Insurance Commissioners model rule for annual audited financial reports. **Section 10** permits the Commissioner to adopt expedited temporary rules in order to keep these rules consistent with the NAIC model rule. The Department needs this flexibility to maintain its accreditation with the NAIC, which is critical for North Carolina insurance companies. This approach will make any rule changes subject to scrutiny through the permanent rulemaking process, which follows the temporary rulemaking process. It just allows changes to go into effect on a temporary basis before the next session of the General Assembly.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 649
Finance Committee Substitute Adopted 5/20/97

Short Title: Lobbyist Penalty. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR LATE FILING OF REPORTS BY LOBBYIST AND PRINCIPAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 2. G.S. 120-47.7(d) reads as rewritten:

"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist's principal who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. This act becomes effective January 1, 1999.

EXPLANATION OF SENATE BILL 649 (2d Ed):
Lobbyist Penalty

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 24, 1998
SPONSOR: Senator Miller

Senate Bill 649 increases the penalty for late filing of lobbying expense reports by lobbyists and lobbyists' principals for reports filed more than 30 days late. The current law only requires an additional $10 late filing fee. The bill is a recommendation of the Secretary of State's office and passed the Senate during the Long Session. The bill has been given a favorable report by the House Committee on Ethics.

Section 1 of the bill amends the penalties applicable to lobbyists who fail to file their required lobbying expense reports on time. Under this section a lobbyist would be required to pay $10 for a report which is less than 30 days late. After 30 days, the penalty increases to $50 per day up to a maximum of $1,000. An appeal process to seek a waiver of the penalty is provided, where excusable neglect, unavoidable delay, or impossibility of performance can be shown as good cause justifying the delay. This appeal is made to the Secretary of State.

Section 2 amends the penalties applicable to lobbyist's principals who fail to file their required lobbying expense reports on time in the same manners as is being amended for lobbyists. A principal means the entity in whose behalf the lobbyist influences or attempts to influence legislative action.

Current law requires a lobbyist and a lobbyist's principal to file an expense report with the Secretary of State within 60 days after the last day of the regular session. The report must include all expenditures made between January 1 and the last day of the regular session. The report must also show the date of each expenditure, to whom paid, the name of any legislator benefitting from the expenditure and the amount of each expenditure made in connection with lobbying in the categories of transportation, lodging, entertainment, food, any item having a cash equivalent value of more than $25 and contributions made or promised. If more than 10 legislators benefitted or were invited to benefit from an expenditure, the lobbyist is only required to report the number of legislators or, with particularity, the basis for their selection.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1429*
Committee Substitute Favorable 6/24/98
Proposed Committee Substitute H1429-PCSX3154-RB1

Short Title: Set Reg. Fees/Company Exams. (Public)

Sponsors:

Referred to:

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEE, TO SET THE INSURANCE REGULATORY CHARGE FOR CALENDAR YEAR 1998, TO AMEND PROVISIONS IN THE INSURANCE LAWS DEALING WITH EXAMINATIONS OF INSURANCE COMPANIES AND AUDITS OF THEIR FINANCIAL STATEMENTS, AND TO CLARIFY THE LAW ON INSURERS' FUNDING AGREEMENT RESERVES.

The General Assembly of North Carolina enacts:

Section 1. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1998.

Section 2. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six percent (6%) for the 1998 calendar year.

Section 3. G.S. 58-7-50(d) reads as rewritten:

"(d) This section is subject to the exceptions provided in G.S. 58-7-55. The Commissioner may allow a domestic insurer to maintain certain records or assets outside this State."

Section 4. G.S. 58-2-131(a) reads as rewritten:

"(a) This section and G.S. 58-2-132 ~~and G.S. 58-2-133~~ through G.S. 58-2-134 shall be known and may be cited as the Examination Law. The purpose of the Examination Law is to provide an effective and efficient system for examining the

activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the Commissioner's jurisdiction; and to enable the Commissioner to use a flexible system of examinations that directs resources that are appropriate and necessary for the administration of the insurance statutes and rules of this State."

Section 5. G.S. 58-2-131(b) reads as rewritten:

"(b) As used in this ~~section, G.S. 58-2-132 and G.S. 58-2-133,~~ section and G.S. 58-2-132 through G.S. 58-2-134, unless the context clearly indicates otherwise:

(1) "Commissioner" includes an authorized representative or designee of the Commissioner.

(2) "Examination" means an examination conducted under the Examination Law.

(3) "Examiner" means any person authorized by the Commissioner to conduct an examination.

(4) "Insurance regulator" means the official or agency of another jurisdiction that is responsible for the regulation of a foreign or alien insurer.

(5) "Person" includes a trust or any affiliate of a person."

Section 6. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-2-134. Cost of certain examinations.**

An insurer shall reimburse the Department for the actual expenses incurred by the Department in any examination of those records or assets conducted pursuant to G.S. 58-2-131, 58-2-132, or 58-2-133 when:

(1) The insurer maintains part of its records or assets outside this State under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets outside this State.

(2) The insurer requests an examination of its records or assets.

(3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business.

The amount paid by an insurer for an examination of records or assets shall not exceed one hundred thousand dollars ($100,000), unless the insurer and the Commissioner agree on a higher amount."

Section 7. G.S. 58-7-16(f) reads as rewritten:

"(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

(1) Standards to be followed in the approval of forms of funding agreements.

(2) Reserves to be maintained by insurers issuing funding agreements.

(3) Accounting and reporting of funds credited under funding agreements.

(4) Disclosure of information to be given to holders and prospective holders of funding agreements.

(5) Qualification and compensation of persons selling funding agreements on behalf of insurers.

In determining minimum valuation reserves to be maintained by insurers issuing funding agreements, the Commissioner may use any relevant actuarial guideline, regulation, interpretation, or paper published by the Society of Actuaries or the American Academy of Actuaries that the Commissioner considers reasonable."

Section 8. G.S. 58-2-131(d) reads as rewritten:

"(d) The Commissioner may conduct an examination of any insurer whenever the Commissioner deems it to be prudent for the protection of policyholders but shall at a minimum conduct ~~an~~ a regular examination of every domestic insurer not less frequently than once every ~~three~~ five years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook."

Section 9. G.S. 58-2-205 reads as rewritten:

"**§ 58-2-205. CPA audits of financial statements.**

The Commissioner ~~is authorized to~~ may adopt rules to provide for audits and opinions of insurers' financial statements by certified public accountants. ~~Such~~ These rules shall be ~~in accordance with~~ substantially similar to the NAIC model rule that requires audited financial reports, as amended. The Commissioner may adopt, amend, or repeal provisions of these rules under G.S. 150B-21.1 in order to keep these rules current with the NAIC model rule."

Section 10. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Commissioner of Insurance may adopt a temporary rule to implement the provisions of G.S. 58-2-205 after prior notice or hearing or upon any abbreviated notice or hearing. When the Commissioner adopts a temporary rule pursuant to this subsection, the Commissioner must submit the reference to this subsection as the Commissioner's statement of need to the Codifier of Rules."

Section 11. Section 1 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1429 A BILL TO BE ENTITLED AN ACT TO SET THE INSURANCE REGULATORY CHARGE FOR CALENDAR YEAR 1998, TO AMEND PROVISIONS IN THE INSURANCE LAWS DEALING WITH EXAMINATIONS OF INSURANCE COMPANIES AND AUDITS OF THEIR FINANCIAL STATEMENTS, AND TO CLARIFY THE LAW ON INSURERS' FUNDING AGREEMENT RESERVES.

☐ 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 # /), (~~and recommendation that the committee substitute bill #) be re-referred to the Committee on .~~)

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

House Finance — July 9, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	N.C.A.F.I.
[signature]	Independent Bankers Bank
[signature]	WCSR
[signature]	
[signature]	NCMHP
Jim Broxon	State Ports
Alice Garland	ElectriCities
Martisha Carr	ElectriCities
BILL SCOGGIN	NC BAR ASSOC.
AB Swindell	DFT
Paul Stock	NC Bankers
Ken Wright	BCBS NC
Robert Prow	Jordan Price Wall Gray & Jones

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Daschail Propes	NC DOI
Paul Gwin	OSBM
Alan Miles	Bailey & Dixon
Starla McKinney	NC DOI
Doug Rogers	NCDOT
Bernard Allen	SOG
John Tate	NHA/NC
Michelle Cook	Weyerhaeuser
Leslie Bevacqua	NCCBI
Ann Case	NCRMA
Andy Ellen	NCLMA
Daschail Propes	DOI

Tape #3

Tape 3 excerpts from July 8th House Finance Committee

Ann Berlam from the State Board of Education on Charter School Bill

Ann Berlam: Thank you, Mr. Chairman. I'll try to summarize some of the Board's discussion today.

The Board likes the current Charter School Law, and I say that in light of what I mentioned to you earlier about the study that they're required by statute to come back in 1999 and present to you. There are some elements of this charter school bill that they do not have any problems with. The issue of the testing and the ABC's program, which I believe was discussed earlier this morning, was actually a policy contained in the State Board of Education policy that the charter schools shall participate in the ABC's program. So there are some elements of that that are already being looked at the Board, but the Board took its responsibility seriously that you gave them to come back and present a thorough report on charter schools, what their mission is, should they be expanded, and they are serving the students that are to be served? The charter schools are supported by the State Board of Education. I told you that they had a breakfast with them this morning and they had charter school representatives meeting with them most of the day today. Charter schools are public schools as you have said. There have been some concerns expressed by the Board in the meeting today. One of those I already mentioned to you about repealing the cap, that the Board is not ready to do at this time. That is not to mean that the Board would not ever want to raise the cap, but we want to see how charter schools are operating. We have only completed one year of operation of charter schools.

The Board is also concerned about some language in this bill that would repeal the local impact statement. And that was just put in the law last year, and it gives local boards of education an opportunity to comment on those local charter school plans for the board to take those plans into consideration. The Board is pleased with the money if it's to be designated...some of it to go from fines and forfeitures for technology...that they do want...as public schools have to spend that money based on local technology plans that charter schools spend that money on technology and I believe that is in the bill that Mr. Daughtry has.

There was a lot of discussion...and this is the last point...the Board held a lot of discussion on the language...the amendment that was offered in the Pensions and Retirements Committee about the good faith effort to reflect the racial and ethnic composition of the community. The Board will be voting on a policy tomorrow that comes as a recommendation from the Charter School Advisory Committee on looking the student population in charter schools, and I know this morning you talked about...and the State Board of Education certainly does not want to go back to segregated schools but wants to ensure that all students have an opportunity to attend schools. There is part of the Charter School Law that says a charter school can apply to be a charter school and have as its mission to serve a certain population, and that's already allowed in the law. There's just concern about what does good faith effort mean. The Board believes that that

is something that would need to be looked at yearly, that the charter school would need to present information to the State Board, that the State Board uses the review process. The Charter School Advisory Committee language that they're going to be considering tomorrow would suggest that the composition of charter schools should be reflected in the schools in the local school system because we all know within some local school systems, some schools have a larger percentage of majority or minority students than the overall school population. So this is an issue that the Board spent a lot of time discussing, and they're not sure if the language that's been proposed in this bill is better than the language that's in the current law that's saying that within one year, but they will be addressing a recommendation from the Charter School Advisory Committee tomorrow. And they, as I said, had a long discussion. There are some things in this bill that are already being done, there are some things with which the Board has some questions and concerns, and we will look forward to coming back to you in January with recommendations on the whole charter school process. Mr. Chairman, thank you.

Greg Malhoit, Director of the North Carolina Education and Law Project

Greg Malhoit: Thank you, Mr. Chairman. My name is Greg Malhoit. I'm the Director of the North Carolina Education and Law Project, which is a research and legal advocacy group supporting the interests of at-risk children in public schools.

My organization has in fact worked with a number of individuals who have started charter schools or wish to start charter schools, so we have some experience working with these schools. And we are a supporter of charter schools under current law. But I wanted to talk with you just for a second today about the very issue that Ms. Berlam was just talking about, which is the racial diversity position that's in the current law.

As many of those in this room know, there was a time in this state's history when our public schools were not integrated. In fact it was not until the early 1970's that racial segregation in our public schools ended in North Carolina. And since then this state has a proud tradition of integration in its public education system. That proud tradition was reflected in the 1996 legislation regarding charter schools passed by this General Assembly. And that is the provision that is in the current law and the one that you are now amending if you pass this current bill.

There is a risk—a significant risk—of resegregation of our public schools as evidenced by the current statistics. It was reported today at the State Board of Education, if fact, that fourteen of the existing charter schools actually have racial compositions which are significantly out of balance with the diversity of the school system at large. In fact, there are some schools that are one race exclusively.

If you pass this bill with the amendment, you will be retreating, you will be retreating from a commitment to integrate schools, particularly charter schools, but public schools in this state. And I am fearful that you will be sending a message to the new charters and to the public schools and to the people of this state that it is okay to move

away from integration and back towards segregation, which has very negative consequences as you all know.

The last thing I would note is that by doing so, you also place this state and the charter schools in substantial risk of violating federal law. There is a federal statute, there is also the United States Constitution and the North Carolina Constitution that address this issue of segregation and integration. There is a better way, I think. Ms. Berlam has indicated that the State Board of Education is prepared to address this issue. I don't believe that there is a significant risk that anybody is going to lose their charter in the next year, but we have this commitment, and our organization would encourage you to encourage you to continue that commitment and remove this provision from the bill. Thank you.

Vernon Robinson

Mr. Chairman, it's tempting to go at length of the misrepresentations, misinformation, and outright...well at the Air Force Academy where I graduated, where we would have been quibbling, and we would have kicked a number of folks out of the Air Force Academy by now. But I would like to yield, if I could, to the parents and children of charter schools who are here, and if there's possibly time for me later to speak I'd like to speak, but it's much more important that the parents, teachers, and other folks in charter schools who came on a very short notice—took off from jobs to come out to keep the blob from taking their schools away today—be heard. I tried to get the inmates in the charter school in the Baker jail to come out, but they assured me that after they get paroled they will come to see the Democratic members of the committee, and Ann Berlam, and Ed Regan and take up their concerns at that time. Mr. Chairman, if you could, is it possible that those folks speak instead.

Chairman: If you've got, what, four people, we'll give them two minutes apiece.

Vernon Robinson: Thank you, Mr. Chairman.

Rep. Miller: Mr. Chairman, I wonder if the gentleman would yield for a question that was...Mr. Robinson.

Chairman: Mr. Robinson, do you yield for a question?

Vernon Robinson: Yes.

Rep. Miller: I just wanted to be sure that I heard you correct that there is a concern that this committee is about to take away the charter schools. Is that what I heard you say, and I'm concerned that that's an idea that someone has.

Vernon Robinson: Mr. Miller, the reason why almost half the folks to my right are your constituents is because they are deathly afraid that the onslaught of the Senate Democrats and House Democrats in conjunction with the education blob to limit, restrict and come up with these ridiculous items like the Senate budget item in the Senate budget which restricts the total enrollment of charter schools to four percent of the public school enrollment per school district creating large charter schools in Elkin City system, for instance, like 30. In Arapahoe, which was the first public charter school for the faculty all NCA members to convert would be restricted to 84, and Rep. Miller, the bottom line is, these is your base. Your base is here and they are horrified at the activities of the Democrats in the House and in the Senate on this issue, and they should be.

Rep. Miller: Mr. Chairman, let me just follow up. Since they are citizens of Durham I think that I'd like to assure them that this committee is not here for purpose of taking away what the legislature has already provided by way of the charter schools. I don't believe that's our function here. That's not what this bill is, and I would not want these participants or families to be of that understanding.

Chairman: Okay. We have Jenny Adams, teacher. If you would come up, hold the button down, identify yourself, and please limit it to two minutes.

Jenny Adams: No problem. Hi, my name is Jenny Adams. I'm a seventh and eighth grade math and science teacher at Arapahoe Charter. We were the only public conversion school. We exist because the school was going to be closed and we followed the avenue that you allowed us last year by passing the law. We applied for a charter and we were granted. And we have been in existence a year. And we did quite well this year.

The point I would like to make, one of the points I'd like to make, please, is that I am a member of NCAE, I've just finished my twenty-eighth year of teaching. One of my concerns is that NCAE has a negative approach toward the charter schools. Let me assure you that as a teacher my job is to teach children, and I would hope that the NCAE would be able to help me teach those children.

Your question about your racial balance, y'all have a tough one in front of you. We believe that all children need to be able to have the right be educated however that education may come. Thank you.

Chairman: Jackie Buru

Jackie Buru: My name is Jackie Buru, and I am the education officer for Spark Academy here in Wake County. I have a strong concern that you don't label charter schools as schools that discriminate and try to become enclaves for a particular race. As a brand new charter school, our attempt was made and our outreach was made to an entire population. I personally returned phone calls to members of another race trying to convince them to stay with our school even though she felt after her discussion with her Jewish friends that maybe she would not enjoy being in a school with predominantly one

race. I would not like to see you smack the hands of the charter schools for the intent of parents. I also would like to ask anybody here, and I know you look above the age of young children, but would you send your grandchildren to a charter school in an area of an urban city that you know has population that is not like the population sitting in this room today? And if you answer that question in your head, then you know the answer to many of the same parents out there in there in the real world. We at Spark Academy want to educate children. We do not want to make schools black or white. We don't even want to ask the question, are you black or white? Those applications and those questions came from somewhere else and they need to be addressed there. Do not smack the hands of charter schools.

Chairman: Ms. Mary Wright.

Mary Wright: My name is Mary Wright. I'm on the law faculty at North Carolina Central University, and I have been working with an organization in the community to establish a charter school. The members of the organization and the persons who are interested in this school are working parents, they are poor parents, they are black parents. And I would like to say that Brown vs. Board of Education, which was decided back in 1954 was not about black children sitting beside white children for purposes of socialization, it was about providing equal access of the tax dollars to black parents who for a long time had been excluded from the benefits of those tax dollars. Public schools, traditional public schools, have never truly been desegregated. They have continued to resegregate black children within the public education system through tracking, through learning-disabled classes, through creation of academically gifted classes that are predominately consisting of white students while the others are disproportionately consisting of black students. And so black parents want the opportunity to have equal access to their tax dollars in order to provide the best education for their children and this is what the charter schools give to us—the opportunity to utilize our tax dollars for the benefit for our children.

Chairman: Rep. McComas

Rep. McComas: Mr. Chairman, I'd like to ask Mrs. Wright a question, if I may. Mrs. Wright, I take it you're a legal council—an attorney.

Ms. Wright: Yes, I am.

Rep. McComas: Follow up, Mr. Chairman. Mrs. Wright would you correct me in my perception. Is it the intent of our Constitution, of our Supreme Court that we have a color blind society?

Ms. Wright: As a matter of fact, as you know, as blacks we were left out of the Constitution. The Constitution considered us three-fifths of a man's, that meant that

women, as a matter of fact, were left out entirely. No. So I do not think the intent of the Constitution was to have a color blind society, and I don't think we ever have had one.

Rep. McComas: What about the Supreme Court?

Ms. Wright: I would say that the Supreme Court has consisted primarily of white males, and no, there has never been the intent there to have a color blind society either.

Rep. McComas: Mr. Chairman, if I may.... Let me ask you this, is it not the intent of our society with all of the laws that have been passed in the last twenty, thirty years to try to get this our culture to be color blind?

Chairman: Let me, forgive me for interrupting. I'm planning on taking a vote at 5:15 and I think we have covered this issue and I don't believe this is really relevant to this bill that we have before us that's more financial. And if we could go on, Mr. Jim Blackburn has asked to speak.

Rep. Nesbitt: Mr. Chairman, point of order. Do you intend to take up our amendments that's been laying up there?

Chairman: That's the reason I was cutting him off.

Rep. Nesbitt: I take that as a yes or a no...

Chairman: Yes, sir. We'll take up the amendment if we have time.

Rep. Leubke: Point of order.

Chairman: Point of order.

Rep. Leubke: Are you telling me with a very light agenda tomorrow, you're telling us you're not willing to carry it over even though we're at five o'clock, we have a number of amendments, I've been waiting all day for an opportunity to speak. I've been on your list.

Chairman: Rep. Leubke, I think everybody knows where they stand on this bill at this point. I think we had a very good discussion, and yes I plan on taking a vote at 5:15. Mr. Blackburn, you have two minutes.

Jim Blackburn: Mr. Chairman, I'll be brief. I want to call your attention to section...I'm not sure what section it is. It's page 18, lines 3 through 5. What the effect of that language is...and I want to reiterate that our organization is not opposed to charter schools, notwithstanding what you may have heard. The effect of that subsection c up there is to remove the affect of the Fiscal Note Act with respect to rules approved by the

State Board of Education that apply to charter schools. That is legislation that we fought hard to secure passage of about three or four years ago that requires agencies when they do rules to determine the fiscal impact on local revenues when they approve those rules... we would hope that you would leave the effect of the Fiscal Note Act in as it applies to the State Board rules that affect charter schools and remove that subsection c there that removes that effect. I know there are other issues with respect to the Administrative Procedures Act, and I think maybe Ms. Winter, if you'll ever give her a chance, might have something to say about that.

Chairman: We have two amendments. Rep. Nesbitt sends forth an amendment and I believe it's been passed out. No. While they're passing it out, on page 13, lines 9 through 35, delete those lines, renumbering the remaining sections. And on page 20, line 30, rewrite those lines to read, "Section 27. This act becomes effective July 31, 1998. Section 26 of this ." Rep. Nesbitt, would you explain your amendment.

Rep. Nesbitt: Thank you, Mr. Chairman. This is an amendment to take out the portions of the bill that we've been discussing concerning racial makeup of these schools. I think Mr. Malhoit gave you a good assessment of the legality of this, and I'm of the opinion that if we go down this road not only are these schools going to encounter difficulty, I think that the state is going to encounter difficulty. When we're sitting here faced with the fact that we passed a law that said that these schools need to reflect the racial makeup of the school system—and by the way, if someone can find a better way to define that to of a portion of the school system, or somebody was talking a while ago of the schools within a school system, because the do vary from school to school, I can understand that...

Chairman: Rep. Nesbitt, forgive me. I'm listening to your argument. I know what you want to do, and if staff would bear with me one moment, I think we can speed this up a little bit. Knowing what you're wanting to do, the current law is everything but what is underlined.

Rep. Nesbitt: Correct.

Chairman: So if we follow your amendment, what's underlined says the school with make a good faith effort to attract and enroll students as the population of the school reasonably reflects. If you are really wanting it to reasonably reflect, it would seem to me you would leave that amendment in there.

Rep. Nesbitt: Well, no. What I want it to do is within one year, the school shall reasonably reflect. Is that not the way the amendment's drawn? Staff drew the amendment, so it's among them.

Chairman: The way I read the amendment, it will delete this whole section...

Rep. Nesbitt: It deletes it from the bill, but it would still be in the General Statutes.

Chairman: Okay. I'm sorry.

Rep. Daughtry: If I could respond to this amendment...

Rep. Nesbitt: Mr. Chairman, I haven't finished; but I'll be glad to go after.

Rep. Daughtry: You finish. I'm sorry.

Rep. Nesbitt: No, you can go right ahead, and I'll go after you're done.

Rep. Daughtry: No. I'm sorry I interrupted you.

Rep. Nesbitt: Thank you, Mr. Chairman. We set forth what we felt like was a reasonable way to affect diversity within these schools. If we retreat at this point, in view of the fact that fourteen of these schools do not reflect, and from what I understand are fairly dramatically do not the racial makeup of those schools, we have participated in the decision not to require diversity in these schools. And I think Mr. Malhoit is correct that we run the risk of losing federal dollars, we run the risk of being sued for participating in it, and I'm going to come down to where...you know down here a lot of times the end justifies the means. And I think that's what we're in here today talking about. Well charter schools are so good, it doesn't matter if there's diversity in this school. It doesn't matter if there's racial diversity or if they're segregated or integrated. And I'm going to tell you, with what this state and this country went through for thirty years, forty years, to get to where we got today, no end can justify that means. And it is in my interest, it is in your interest, and the interest of these children and parents in these schools, whether we realize it or not, that our children be exposed to diversity and that they be integrated into society through the school system. That is a very important role of the school system. It is an important role of any education. And we need to take this provision out of this bill, and here's what's going to happen. The State Board isn't going to close any of these schools. They're going to tell them what they need to do to fix the problem. And we need to keep that pressure on. And I think I heard that the State Board does not favor this language. They favor the language they had, and they can then proceed to try to bring about diversity in these schools, which is the appropriate way to do it. And I would urge you to adopt the amendment.

Rep. Daughtry: When we passed a charter school bill last year it was the intent to make sure that the charter schools were racially diverse to reflect the community. That was our intent. In practicality, when reality came along, there were charter schools that were not racially diverse. Healthy Start who is here today, and many of them are here today, has a predominantly Afro-American student body. Now according to the law that we have passed, they have one year to get their school in line. Now you're saying they are not going to close the school, well all this bill does is says they will not close the school.

Chairman: Thank you. Ayes and noes. Rep. Luebke.

Rep. Luebke: Mr. Chairman, I support the amendment because we are looking at in this language of this bill at this point a major policy change in terms of our commitment to racial diversity in our public schools. We fought in this state for too long the battle to try to bring racial diversity to our public schools. We had a system of legal segregation. And I support the specific efforts of our Healthy Start Academy in Durham to succeed, but for them to explain to the State Board why they couldn't do what they did, as they just have explained, would be a way of responding to the current legislation, the current law, which talks about how the charter school shall reasonably reflect the racial and ethnic composition of the general population. We can keep that existing law in there and deal with the specific situation. This language is very all encompassing and allows people of bad faith, that is to say, that language of the current bill proposal, allows people of bad faith to move forward. We can deal with the situation of existing schools like Healthy Start Academy with current law, and therefore I urge you to support Rep. Nesbitt's amendment which would bring us back to current law.

Chairman: Okay, we will call the roll. All those in favor will vote aye and all those opposed vote no. The clerk will call the roll.

Clerk: Allred no, Arnold, Baddour aye, Beall aye, Berry, Boyd-McIntyre, Brown no, Buchanan no, Capps no, Carpenter no, Cole aye, Crawford, Cunningham, Decker, Dedmon aye, Eddins no, Fitch, Gamble, Goodwin, Hackney aye, Hensley aye, Hill aye, Howard, Bryant aye, Hightower aye, Jarrell aye, Luebke aye, McComas, McCombs no, McMahan no, Mercer, Miller aye, Miner, Morgan, Morris no, Neely no, Nesbitt aye, Nichols, Ramsey, Rayfield no, Russell no, Starnes no, Tallant, Womble aye, Wright aye, Gray no, Brawley no, Dickson no, Wilson no, Wood, Daughtry no.

Rep. Hightower: Didn't somebody answer for Rep. Morgan? I don't see him here.

Mr. Chairman, I didn't hear my name.

Chairman: Okay. Mark through Rep. Morgan's name and Rep. McComas didn't hear his name.

Rep. Hightower: He was not in.

_____ He was not in his seat at the time and is not eligible to vote.

Chairman: Okay. There being 15 ayes and 18 noes ....

Tape #4

Excerpt from Finance Committee Meeting, July 8, 1998, concerning Charter School Bill:

Rep. Nesbitt: This amendment would keep the state employees' health plan and retirement system consistent but for University employees, and I didn't know until today that—I guess it's University professors have the right to opt out for some reason. I don't know if that has to do with their longivity at a place. Maybe they come in at an age where they've been in other retirement systems or something. It transfers between universities, apparently. That's why we gave them an exemption; so if they taught somewhere else for fifteen years, they could then take their money and put it in a 401K and probably come out better than getting ten years in our system. But for normal employees, throughout the system, you're in. And that's a good simple rule, and I am terribly concerned when we start messing with something as good as our retirement system and our health care plan to start letting people opt in and opt out. I know in the health plan, you get adverse selection when individuals can opt in and opt out, but I would assume you would get that with schools opting in or opting out. And that costs all the rest of us that are in the plan. And you've got to understand, these systems work on critical mass. They require that everybody participate. That's how we all get the benefits we get. And I remember last year we had to fix it to where they could get in, and I don't know of a soul who doesn't want to be a member of the State Retirement System or the State Health Care System. I mean it's a good plan. Under the State Health Care Plan they can opt for an HMO or the things that other State employees can opt for. But it's a good benefit, and it's not penalizing anybody to give it to them. And I would urge adoption of the amendment so that we can keep that plan intact.

Chairman: Rep. Daughtry.

Rep. Daughtry: I would oppose the amendment. We have been through this before. We're not plowing new ground. It simply permits those schools that want to—the IRS will allow them, if they want to—to participate in the State Employees' Retirement System and health plan or not. It's their choice. And that's something that's not opting in or opting out. They make one decision and they stick with that decision. They only get one bite of the apple, and the boards of trustees do that. If they can find a better retirement system, and I don't think they can.... I think you're right. I don't foresee many charter schools not participating; but if they do, so be it. So I hope you will vote against the amendment.

Chairman: Rep. Luebke and Rep. Wilson.

Rep. Luebke: I have a question of staff with respect to this amendment. Is it possible if the amendment is not successful...in other words under the current language in the bill, that school teachers at charter schools could have health benefits or retirement benefits that are either much weaker than the retirement health plan or in fact could have no health and retirement plan at all? Is either of those things a possibility?

Staff: Rep. Leubke, the answer is yes.

Rep. Luebke: So yes, it's possible that you could be a public school teacher in the charter schools and have no health plan and no retirement plan?

Staff: Yes, sir. That's correct.

Chairman: Rep. Wilson

Rep. Wilson: Is there someone from...I think the Healthy Start School had an interest in this issue, if we could have a representative from there just comment on the amendment and...

Chairman: In thirty seconds.

Representative from Healthy Start: My teachers have told me they do not want to be in the State health or retirement plan. I offer them a better plan than the State plan is. The Board puts in eight percent, they're vested after two years, and that money is theirs to take wherever they wish to go. The health plan I offer them is better than the State health plan and it's a market driven thing. I mean, if I'm going to attract good teachers, I have to offer them a good salary and good benefits.

Chairman: Thank you. This amendment will put the charter schools all in the State health plan and retirement system. If you vote against the amendment, you're voting to leave the bill as is where they have an optional choice. All those in favor let it be known by supporting the amendment. Let it be known by saying aye. Those opposed no. The no's have it.

Rep. Miller: Mr. Speaker (sic)

Chairman: Mr. Speaker (sic), we have an opportunity here that has not been presented to the members of the Finance Committee. I know that the hour is late, but so many of us here have been in the General Assembly for many years. We have wrestled with the issue of public school education every session. We've done everything we have thought we could do to improve it. Our only motives were for the best education of our children. We have appropriated taxpayers' dollars in the millions. We continue to do that. Now we have a charter school, it so happens from Durham, and from the record that's been presented by test scores at least, there's material improvement in their ability to teach children. I would like to know what their secret is. I would like to know what they're doing. I would like for us to learn from what it is. Is it teacher/class/student ratio? Is it better teachers? Is it facility? What is it, because we need to learn and benefit from any source that we can? And I would hope, Mr. Chairman, that you would allow those who are associated with this school to tell us what it is that they are doing that results in a better education for these children, if that is the case, because we could learn from that if

that is the case. I would hope you'd give them a chance to tell us that. I think everyone in this room would like to know that and everybody in the General Assembly would like to know that.

Chairman: Rep. Miller, I agree with you one hundred percent. That is not the purpose of this committee nor this bill, and when that issue comes before us we will take it up as germane. Rep. Starnes.

Rep. Starnes: Thank you, Mr. Chairman. We've had ample debate on this bill. I've made a motion for a favorable report and I call the question...call for the ayes and no's.

Chairman: Mr. Starnes moves that the bill be given a favorable report...there's been no amendment...there was one amendment?

Clerk: Two

Chairman: ...that the amendments be rolled into a committee substitute and the committee substitute be given a favorable report, unfavorable as to the original bill. Call for the ayes and no's having been made, the clerk will call the roll. Those in favor will vote aye, those for giving the bill a favorable report. No, if you don't want to give it a favorable report. All those in favor of calling the question let it be known by saying aye. Those opposed. They ayes have it. The roll will be called.

Vote: Allred aye, Arnold aye, Baddour no, Beall no, Berry, Boyd-McIntyre, Brown aye, Buchanan aye, Capps aye, Carpenter aye, Cole aye, Crawford, Cunningham, Decker, Dedmon, Eddins aye, Fitch, Gamble, Goodwin, Hackney no, Hensley no, Hill aye, Howard, Bryant, Hightower no, Jarrell no, Luebke no, McComas aye, McCombs, McMahan aye, Mercer, Miller no, Miner aye, Morgan, Morris aye, Neely aye, Nesbitt no, Nichols, Ramsey, Rayfield aye, Russell aye, Starnes aye, Tallent, Womble aye, Wright no, Gray aye, Brawley aye, Dickson aye, Wilson aye, Wood, Daughtry aye.

Chairman: While she's counting that, if the members of the school in Durham would help us with a written report or an outline of what you've done to be so successful, this Finance Committee will be glad to take that information and share it with the rest of the members of the General Assembly, and we congratulate you on the work that you have done. Rep. Hightower.

Rep. Hightower: Would it be in order to ask them to come back to a meeting, maybe when we're not so rushed, and let them tell us what it is they are doing.

From the floor: Give them five minutes.

Chairman: If everyone wants to stay here and listen, we'll give them five minutes now. Go ahead.

Vanessa Spence: Hello, I'm Vanessa Spence, kindergarten chair and kindergarten teacher at Healthy Start Academy. Yes, my children were in the ninety-nine percentile in the United States and what got them there, first of all, was the caring, the knowledge that was giving to them. We taught those children. We did not push them aside or push them in the corner. We ignored the at risk. We had children in our classroom that I know would have been labeled. I am from the public school system originally, so I know. I've had maybe four or five children transferred to the classroom in which I teach because of the fact that I look at each child as a individual and not as a number but as a person. And those children...the love, I guess, that I give them and they give me in return...the environment is just wonderful. That's all I can say about it, and I will continue to work hard. If I can change one child's life, I will because our children were from homes that were under...that were deprived. Our children were deprived of love from the parents. Most of my children were from single-parent homes...homes that grandparents were taking care of the children that parents were either in prison or on drugs. But I guess their little light can shine just like anyone else's, and we do not label children at Healthy Start Academy. Thank you.

Chairman: Thank you very much.

_____: Mr. Chairman. Could I ask just one question of the teacher?

Chairman: Sure.

_____: Could you tell us...ma'am could you come back for just a moment? Could you tell us a little bit more about the curriculum and your teacher/student ratio, and I admire you in the way that you've talked about how you perceive, but help us in doing that because we're over here appropriating millions of dollars dealing with teacher/student ratio, facilities, and things of that nature.

Vanessa Spence: Okay. Well, basically, we had no books to teach our children, so it had to come from what we knew or what we had learned ourselves. And I started with children...27 in the classroom, one teacher and a TA half day. I started with...the students had no knowledge of numbers or alphabet recognition, and I started from square one. I taught an alphabet or two alphabets a week. I taught three numbers a week. This is at the beginning. We taught them through a reading program—SRA reading, which is a systematic reading program, and I guess you are familiar with Reader Rabbit and all those series...that's where it comes from. And I was persistent. I know in public schools we have a housekeeping area, play areas. In Healthy Start we had reading areas, science areas. Basically reading, writing, and arithmetic. That's what I went back to. And not the point where one child had to be taught. All children had to be taught. So no matter what, I still went by that same system. In other words, I taught them their alphabets, their numbers; and I taught them how to read.

Rep. Arnold: Mr. Chairman.

Chairman: Rep. Arnold

Rep. Arnold: Ma'am, what you have told us is that you had an attitude that every child could learn, and you taught each child as an individual child; which is, I think, similar to what we found in those areas where we had assistance teams and those children learned. But your attitude, first of all, because you didn't have the technology and all those other things, was that those children can learn, and you taught them from that base. Is that correct?

Vanessa Spence: That's absolutely correct.

Rep. Arnold: And if every teacher, when you were in the public school, had that same attitude, do you think public schools could be successful?

Vanessa Spence: I really do. And the children who learn on a lower rate or a lower level, if they would zero in on those children, target those children, meaning give them that extra that they need, then all children can succeed. I think we use the labeling concept as an escape goat (sic) or whatever.

Rep. Arnold: Was parental involvement a major factor that you contributed success to or any impact at all?

Vanessa Spence: Definitely.

Rep. Arnold: Favorable impact?

Vanessa Spence: Favorable impact. We had parents who had one-on-one conversations—parents who were there for their children. They understood that their children were at risk and they were there for them.

Chairman: Rep. Hightower.

Rep. Hightower: Yes, ma'am. How many children were in your class?

Vanessa Spence: I had twenty-two graduating children.

Rep. Hightower: And this is a kindergarten or first grade class?

Vanessa Spence: This is a kindergarten class.

Rep. Hightower: All right. An observation. We've got the same situation because in public schools, I know of public school teachers who are doing the same thing you're doing. They're doing the best they can, they love the children, they're really going one-on-one, teaching them the alphabet and everything. But you must have had something special and I really haven't gotten you to tell me what that is yet, that you were able to...that these children were able to score in the ninety-nine percentile in the whole United States when public schools haven't been doing it, or other private schools haven't been doing it. What is this special thing? Just think for just a second and tell us what you did that's different. I mean other teachers are doing the same thing. They love their children, they have taught them the abc's one on one, they've had parent participation, and I'd just like to know what it is.

School Administrator: I think the one thing we did above everything else, we set very high expectations for these children. We essentially took the standard course of study for the first grade and said we are going to accomplish this in kindergarten. And we did.

Rep. Hightower: One more question. Did you teach...When you taught the children, you didn't teach them, you didn't take the test and teach them the test, I don't guess, did you? I mean, you wouldn't have thought about doing that?

School Administrator: No, you don't get the Iowa test until they send it to you, so there's no way to know what's on it. There's no way to teach to it at all.

Rep. Hightower: Well, is this the only classroom in the school that had the ninety-nine percentile? Every class in the school had the ninety-nine percentile? For four classes in the school? And every one of them had different teachers and every one of them scored in the ninety-nine percentile.

Chairman: I have Rep. Dickson and Rep. Capps.

Rep. Dickson: Thank you, Mr. Chairman. I'd like to ask you the length of your school day. Was it the same as a regular public school day, and did you have any remediation other than during the so-called normal school hour?

Rene Harrington Hi. My name is Rene Harrington and I am from Healthy Start Academy. Our school hours is from eight o'clock in the morning until three. Yes, we have remedial courses, but they are done during the school hours. We have an opportunity classroom where those kids that are below grade level, they are, they come out of their classroom to go to a lower class. We also have a skills center that teaches the kids the Hooked on Phonics, the SRA reading, and anything else that they need to know. They also work on computers and they're in that classroom from twenty to about thirty minutes and they return to their classroom. The opportunity classroom is an opportunity for kids to get on-grade level. It is ten kids, ten students, in there with...I'm sorry, there is sixteen students in there with two TA's and the TA's work very hard to get these students

on grade level during the school year. That way they do not have to go to summer school because they get what they need those ten or those twelve months that they are in school because there is no way that you can get the education in summer school for four weeks that you have spent your whole school term in there for eleven months. There was no way that you could get that same education in four weeks. So we expect our kids...and we tell them, that you can do this and you can do that. Don't let anybody tell you that you cannot do this and you cannot be that. We expect our kids to be doctors, lawyers, legislators, senators, anything that they want to be and those are our expectations.

Rep. Dickson: A quick follow-up, Mr. Chairman.

Chairman: Rep. Dickson.

Rep. Dickson: Do you have teacher meetings during the week when you all get together and kibitz with one another, or do they have mentors? And I assume that all of you got together in the very beginning and decided that you wanted to be a part of a charter school and had a good hashing over of what you expected your group to do. Is that true?

Rene Harrington: Yes. We have teachers...our teachers on each grade level have a day of the week that they meet with our principal. He meets with them every morning from seven-thirty to eight o'clock, and he put a lot in these teachers so they have a lot to depend on him for also because these teachers that we have thought they needed textbooks to teach our kids. No, all you need is a newspaper where you could teach them the weather all day long because it's there all over the United States. So we don't need textbooks. We teach the kids from what we know.

Chairman: I've got four more people down and I'm not taking any more. Representatives Capps, Nesbitt, Hightower and then Starnes.

Rep. Capps: Yes. As a representative of Durham County where your school is located, I want to commend you for what I've heard, and I intend to go and take a visit and I invite others too. But I want to ask you if the real difference in your school, getting back to what Rep. Hightower and Rep. Miller said, if the real difference in your school is not what the headmaster said, we hold high the ladder of expectations, we challenge our children to reach it and they do it. And the other difference mentioned by the parents of that school, is you teach manners, and you teach the kids to love each other and work together.

School Administrator: There's also one other point to make and that is that if we don't do a good job, our parents can leave. I mean we have a very big incentive to do a good job because if I don't, the parent goes. My kid's not reading. You told me he'd be reading by the end of kindergarten. We're leaving. And that kid leaves my school and the money goes with him. So having the money follow the children is a good thing because it forces me to provide the type of education my parents want.

Chairman: Rep. Womble, I've got three people ahead of you.

Rep. Womble: Well, I just wanted to ask this particular lady a question.

Chairman: She's going to still be there when we get to you.

Rep. Womble: Thank you.

Chairman: Rep. Nesbitt.

Rep. Nesbitt: Mr. Chairman, I have actually two questions and they have to do with the same thing, but I think I heard the first lady say that she started with 28 and she graduated 22 in kindergarten. What happened to the other six?

Administrator: They decided to leave the school.

Rep. Nesbitt: Can you tell us about that? I mean what were the conditions or what...?

Administator: A lot of people decided that our program was too hard. I mean we expect a lot, and we expect a lot of parents.

Rep. Nesbitt: Do you expel any children, or do you have any discipline problems.

Vanessa Spence: No. And we lost kids due to transportation, and we lost some due to uniform because they didn't want their child wearing blue and white every day.

Rep. Nesbitt: The second question is, do you have any children with special needs, and I'm talking about severely handicapped, mentally or physically in your school?

Vanessa Spence: We had one. She is a...she is a first grader. She's now a second grader who was labeled in the Durham Public Schools as mentally retarded. She took her test back in October. When we gave the first test, she was on kindergarten, first-month level. When she took her test in May she was on second grade, first-month level. And she was labeled as mentally retarded.

Rep. Nesbitt: But that is the only special needs child that you have there?

Vanessa Spence: No, not really. We have other kids that are on special needs; but if you was to walk in our school, you wouldn't know.

Rep. Nesbitt: Well the question I was asking, is that the most severe child with special needs?

Vanessa Spence: Yes.

Rep. Nesbitt: You don't have any that...

Vanessa Spence: We had a couple of students that was on...who started our school that was on Rittalin. When the parents took their children back to the doctor, the doctor took the children off the Rittalin because they didn't need the Rittalin anymore.

Chairman: Rep. Hightower.

Rep. Hightower: Is there anyone from the Department of Education still here?

Chairman: Foyle, we're not going to get into that right now. If you've got something for these ladies...

Rep. Hightower: Did anybody with the Department come while you were in school and stay with you at any length of time in a day or during the last year?

Administrator: We had...no, we haven't had anyone.

Rep. Hightower: Nobody has come and say kind of inspected to see what you were doing or whatever?

Administrator: No.

Rep. Hightower: So you had free reins just to do whatever you wanted to do?

Administrator: Hmm Hmm. (Yes.)

Chairman: Rep. Starnes.

Rep. Starnes: Can you tell me what your per-pupil expenditure is?

Administrator: We receive...the allotment from the state is about $3,200 per student and then we receive another $1,900 per student from the county. It comes to, I believe, a little over $5000 some odd dollars, whereas the county school system gets around...a little over $8,000 per student. So we do it for less money than the Durham....

Rep. Starnes: Then my other question was, tell me how you handle discipline.

Vanessa Spence: Each student have their own way of acting out. We...some of the teachers let them act out on their own because as soon as they see they aren't getting any

attention, then they stop what they're doing. Some gets sent to the office because...we do have a couple that will try to fight the teachers; but we tell them, you have two choices. You could choose the good choice, or you could choose the bad choice; and the bad choice is you can get sent home for ten days. And the good choice is you're going to remain in school and get your education.

Chairman: Rep. Womble.

Rep. Womble: Thank you, Mr. Chair. Just wanted to ask a couple of questions here. One is, is there a selection process?

Administrator: No. We take anybody who comes through our door.

Rep. Womble: This follow up. Is there any time anybody is denied admission to the school?

Administrator: No.

Rep. Womble: The next is, you do have discipline problems. Is that correct?

Administrator: We have lots of children who have not had discipline. Yes.

Rep. Womble: And one of the ways that you handle the discipline problem is by suspension?

Administrator: No.

Rep. Womble: I just heard someone say they send them home for ten days.

Administrator: We give them that option. We tell the children that you can either be suspended or you can make the right choice and do what you're supposed to do.

Vanessa Spence: We only send them home if they are.... We keep them in the school and they talk to the principal, and they talk it over about what they could have done to make the problem better. We don't just suspend kids with conflict resolutions. Very seldom do we suspend kids and send them home. Only if they are a danger to themselves or to others, that's the only that they will get sent home from school. Otherwise we take care...we have on the insiders what we call an in-school suspension where they sit in the principal's office and they do their work all day long, so they have not missed any of their education for that day. They are still in school, they are still getting their work that they would have done for that day instead of going home, missing five days of work they could have been in school doing it.

Rep. Womble: What I wanted to bring up, Mr. Chair, is that there are some discipline problems, and the way they handle the discipline problems in some cases are

similar to public school. Public school does have an in-school suspension program. Public school does have an out-of-school suspension program too. So those things that are similar, I don't know how true it is, but I've heard, and this is strictly speculation, that there is some people who are denied admission to the school. Now I'm not talking about your particular school, but I have heard that, and I don't know how true it is, that in some cases there has been a selection process. When there's a selection process, then that selection process has a tendency to get the kind of clientele that you want—the kind of clientele that you're targeting—and that may or may not be true. And if it is true, then it may have some bearing on the clientele that that school has. Just wanted to make that point. Thank you, sir.

Chairman: And Rep. Wright, would you like to rap it up? Thank you. Okay. Committee, I appreciate your patience today. The vote was 24 ayes, 12 no's, the report will be given a favorable report. Thank you and have a good evening.

AGENDA

COMMITTEE ON FINANCE

WEDNESDAY, JULY 8, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Brawley

BILLS FOR DISCUSSION:

HB-1739 - Retirement/Charter Schools	Rep. Daughtry
SB-475 - Fund for Displaced Homemakers	Sen. Perdue
SB-1289 - Clarify Transit Authority Debt	Sen. Gulley

ADJOURNMENT

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, JULY 8, 1998

8:30 A.M. AND AFTER SESSION

ROOM 544-LOB

Rep. Brawley called the meeting to order and introduced Pages and Sergeant-At-Arms staff. A silent roll was taken, (roll list denotes members present).

SB-475 FUND FOR DISPLACED HOMEMAKERS

Sen. Perdue explained the bill. Rep. Cunningham sent forth an amendment to change the effective date. The vote was taken and the amendment was adopted. Rep. Cole moved to roll the amendment in for a House Committee Substitute and give a favorable report. The vote was taken the bill was given a favorable report.

SB-1289 CLARIFY TRANSIT AUTHORITY DEBT

Sen. Gulley explained the bill. Rep. Buchanan moved for a favorable report. Rep. Cole questioned the sponsor and he responded. The vote was taken and given a favorable report.

HB-1439 RETIREMENT/CHARTER SCHOOLS

Rep. Daughtry explained the bill. Mr. Doug Haynes, VP, Charter Schools Association was asked to address members also. Rep. Jarrell had a question of the sponsor and he responded. Rep. Womble questioned the racial make-up of a school. Mr. Haynes responded. Rep. Hackney asked the Chairman if the opposition would be allowed to speak to members. He was advised everyone would be given an opportunity to speak. Rep. Starnes moved for a favorable report. Rep. Hensley sent forth an amendment, explained and urged adoption. Rep. Nichols questioned the amendment and Ms. Cindy Avrette, Research Division, answered. Rep. Daughtry questioned Rep. Hensley about the Constitution. Rep. Neely spoke on the Constitution. Ms. Robin Johnson, Research Division, addressed Rep. Neely's comments. Rep. Cunningham questioned charter schools being non-profit corporations. Rep. Daughtry replied. Rep. Neely spoke again, as did Rep. Decker. Rep. Baddour requested to hear from Mr. Phil Kirk, State Board of Education. Rep. Hackney requested that Mr. Michael Crowell, attorney for various local schools, give his opinion on the bill and the amendment. Mr. Crowell addressed members. Rep. Neely had questions for Mr. Crowell and he responded. Rep. Jarrell also questioned Mr. Crowell about hiring teachers and he replied. Rep. Daughtry asked Mr. Crowell a clarifying question and he responded. Rep. Cunningham was concerned about the Board of Directors for charter schools. Rep. Nesbitt commented on segregation of schools and the retirement systems. Ms. Johnson, Research, responded to each of his comments/concerns/questions.

Time expired and the Chairman announced we would return immediately following session this afternoon.

Meeting adjourned at 9:50 a.m.

Chairman Brawley called the meeting back to order at 4:00 p.m. and welcomed Rep. Annette Bryant who took Rep. Hunters place.

HB-1739 RETIREMENT/CHARTER SCHOOLS

Discussion resumed on the Hensley amendment. Rep. Hensley again urged support and Rep. Daughtry urged defeat. Rep. Capps opposed the amendment. The vote was taken and the amendment was defeated.

Rep. Eddins sent forth a technical amendment. Rep. Daughtry supported it. Ms. Cindy Avrette explained the amendment. The vote was taken and adopted.

Rep. Hensley sent forth another amendment, explained and urged support. Rep. Daughtry spoke against the amendment. Rep. Luebke questioned Rep. Daughtry and he responded. Rep. Hightower spoke in favor of the amendment. Rep. Hensley spoke a second time and requested the ayes and noes be recorded. Rep. Rayfield opposed the amendment. Rep. Daughtry responded to Rep. Hensley's previous comments. Rep. Russell spoke on the amendment. Rep. Baddour asked to hear from the Board of Education on the amendment. Ms. Ann Burlin, Legislative Liaison State Board of Education addressed members. The roll call vote was taken and defeated, 14 yes - 18 noes.

Rep. Hensley sent forth another amendment, explained and urged support. He again requested a roll call vote. Rep. Daughtry opposed this amendment also. Rep. Hightower supports the amendment. Mr. Jim Blackburn, County Commissioners Association spoke and supports the amendment. Rep. Cole questioned the sponsor and Rep. Daughtry replied. Rep. Hensley spoke again and Rep. Daughtry addressed his comments. Rep. Starnes and opposed the amendment but supports the bill. Rep. Allred spoke on the amendment and suggested he also send forth an amendment. Rep. Brown opposed the amendment. The roll call vote was taken and the amendment was defeated, 14 yes, 20 noes.

Rep. Baddour requested that Ms. Burlin address members again. Chairman Brawley advised there were others who wished to be recognized too. Ms. Burlin spoke again. Mr. Greg Malloy, NC Education and Law Project, addressed members. Mr. Vernon Robinson, State Board of Education also addressed members. Rep. Miller questioned Mr. Robinson and he responded. Mr. Robinson requested that some charter school staff members be allowed to speak. Ms. Jenny Adams, Math and Science teacher, Ms. Jackie Buru, Education officer for Spark Academy, Wake County, and Ms. Mary Wright, Law Faculty NC Central University, addressed members. Rep. McComas asked Ms. Wright if she felt the Constitution was "color-blind". Chairman Brawley asked to move on and called for Mr. Jim Blackburn, County Commissioner Association to speak again.

Rep. Nesbitt sent forth an amendment, explained and urged support. Rep. Daughtry opposed the amendment. Rep. Nesbitt called for the ayes and noes. Rep. Dickson spoke against the amendment. Rep. Brown opposed it. Ms. Liz Morey, Executive Director of Healthy Start, Durham, NC, addressed members. Rep. Luebke supports the amendment. The roll call vote was taken, 15 yes, 18 noes. The amendment was defeated.

Rep. Allred sent forth an amendment and explained. Rep. Daughtry supported this amendment. Rep. Carpenter sent forth a perfecting amendment. The vote was taken on the perfecting amendment and was adopted. Rep. Neely suggested a correction on Page 26 since this amendment had been adopted. Staff was advised to make the necessary correction.

Rep. Nesbitt sent forth another amendment and urged adoption. Rep. Daughtry opposed. Rep. Luebke questioned staff and Mr. Sam Byrd, Fiscal Research Division responded. Ms. Liz Morey spoke on the amendment. The vote was taken and amendment was defeated.

Rep. Miller spoke on the bill. Rep. Starnes called the question. That vote was taken and passed. Rep. Hightower requested the ayes and noes be recorded on the vote for the bill.

A roll call vote was taken on the bill (to roll the passed amendment into a committee substitute) and give a favorable report, unfavorable to the original committee substitute. It passed with 24 ayes, and 12 noes.

Members requested to hear comments from the Healthy Start Academy. Ms. Veronica Spence spoke on the success of their academy. Ms. Renee' Arrington and Ms. Morey also shared success stories. Discussion continued with questions and answers from Rep. Capps, Rep. Dickson, Rep. Nesbitt, Rep. Arnold, Rep. Hightower, Rep. Starnes and Rep. Womble.

The meeting adjourned at 5:50 p.m.

Robert Brawley
Rep. Brawley, Chairman

Cindy Brooks
Cindy Brooks, Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1739*
Committee Substitute Favorable 6/24/98
Committee Substitute #2 Favorable 7/2/98

Short Title: Retirement/Charter Schs. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW CHARTER SCHOOLS TO ELECT TO PARTICIPATE IN THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, IN THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN, OR BOTH, TO GIVE CHARTER SCHOOLS THE SAME MOTOR FUEL TAX EXEMPTION AS PUBLIC SCHOOLS, TO ALLOW CHARTER SCHOOLS TO OBTAIN THE SAME PERMANENT LICENSE PLATES AS PUBLIC SCHOOLS, TO MAKE CHANGES IN THE CHARTER SCHOOL LAW, TO PERMIT A LOCAL BOARD OF EDUCATION TO APPLY FOR CHARTER STATUS FOR ONE OR MORE OF ITS PUBLIC SCHOOLS, AND TO REQUIRE RULES GOVERNING CHARTER SCHOOLS TO BE SUBJECT TO REVIEW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-238.29F(e) reads as rewritten:

"(e) Employees. --

(1) An employee of a charter school <u>operated by a private nonprofit corporation</u> is not an employee of the local school administrative unit in which the charter school is located. <u>An employee of a charter school operated by a local school administrative unit is an employee of the local school administrative unit in which the charter school is located.</u> The charter school's board of directors

shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.

(2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.

(3) If a teacher employed by a local school administrative unit makes a written request for an extended leave of absence to teach at a charter ~~school,~~ school operated by a private nonprofit corporation, the local school administrative unit shall grant the leave. The local school administrative unit shall grant a leave for any number of years requested by the teacher, shall extend the leave for any number of years requested by the teacher, and shall extend the leave at the teacher's request. For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave or extension of leave be made up to 45 days before the teacher would otherwise have to report for duty. For subsequent years, the local school administrative unit may require that the request for a leave or extension of leave be made up to 90 days before the teacher would otherwise have to report for duty. A teacher who has career status under G.S. 115C-325 prior to receiving an extended leave of absence to teach at a charter school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

(4) The employees of the charter school operated by a private nonprofit corporation shall be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the Teachers' and State Employees' Comprehensive Major Medical Plan. The State Board of Education provides funds to charter ~~schools,~~ schools

operated by private nonprofit corporations, approves the original members of the boards of directors of the charter schools, has the authority to grant, supervise, and revoke charters, and demands full accountability from charter schools for school finances and student performance. Accordingly, it is the determination of the General Assembly that charter schools operated by private nonprofit corporations are public schools and that the employees of these charter schools are public school ~~employees and are "teachers" for purposes of membership in the North Carolina Teachers' and State Employees' Retirement System and State Employees' Comprehensive Major Medical Plan.~~ employees. Employees of a charter school operated by a private nonprofit corporation whose board of directors elects to join under G.S. 138-5.3 are 'teachers' for the purpose of membership in the North Carolina Teachers' and State Employees' Retirement System. Employees of a charter school operated by a private nonprofit corporation whose board of directors elects to join under G.S. 135-40.3A are 'teachers' for the purpose of membership in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System."

Section 2. Article 1 of Chapter 135 of the General Statutes is amended by adding the following new section:

"**§ 135-5.3. Optional participation for charter schools operated by private nonprofit corporations.**

(a) The board of directors of each charter school operated by a private nonprofit corporation shall elect whether to join the Retirement System in accordance with the laws applicable to that System. This election shall be in writing, shall be made no later than September 1, 1998, and shall be filed with the Retirement System and with the State Board of Education. For each charter school employee who is employed on or before the date the board makes the election, this election is effective as of the date the board makes the election. For each charter school employee who is employed after the date the board makes the election, the election is effective as of the date of that employee's entry into eligible service. This subsection applies only to charter schools that received State Board of Education approval under G.S. 115C-238.29D in 1997 or 1998.

(b) No later than 30 days after both parties have signed the written charter under G.S. 115C-238.29E, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to join the Retirement System in accordance with the laws applicable to that System. This election shall be in writing and filed with the Retirement System and with the State Board of Education and is effective for each charter school employee as of the date of that employee's entry into

eligible service. This subsection applies to charter schools that receive State Board of Education approval under G.S. 115C-238.29D after 1998.

(c) A board's election to join the Retirement System under this section is irrevocable and shall require all employees of the charter school to participate.

(d) No retirement benefit, death benefit, or other benefit under the Retirement System shall be paid by the State of North Carolina or the Board of Trustees of the Teachers' and State Employees' Retirement System with respect to any employee of a charter school whose board of directors does not elect to join the Retirement System under this section or with respect to any beneficiary of that employee.

(e) The board of directors of each charter school shall notify each of its employees as to whether the board elected to join the Retirement System under this section. This notification shall be in writing and shall be provided within 30 days of the board's election or at the time an initial offer for employment is made, whichever occurs last. If the board did not elect to join the Retirement System, the notice shall include a statement that the employee shall have no legal recourse against the board or the State for any possible credit or reimbursement under the Retirement System. The employee shall provide written acknowledgment of the employee's receipt of the notification under this subsection."

Section 3. G.S. 135-4 is amended by adding the following new subsection to read:

"(bb) Credit for Employment in Charter School Operated by a Private Nonprofit Corporation. -- Any member may purchase creditable service for any employment as an employee of a charter school operated by a private nonprofit corporation whose board of directors did not elect to participate in the Retirement System under G.S. 135-5.3 upon completion of five years of membership service after that charter school employment by making a lump-sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms 'full cost', 'full liability', and 'full actuarial cost' include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance."

Section 4. G.S. 135-40.1(6) reads as rewritten:

"(6) Employing Unit. -- A North Carolina School System; Community College; State Department, Agency or Institution; Administrative Office of the Courts; or Association or Examining Board whose employees are eligible for membership in a State-Supported Retirement System. An employing unit also shall mean a charter

school operated by a private nonprofit corporation in accordance with Part 6A of Chapter 115C of the General Statutes ~~whose employees are deemed to be public employees and members of a State-Supported Retirement System.~~ whose board of directors elects to join the Plan under G.S. 135-40.3A."

Section 5. Part 3 of Article 3 of Chapter 135 is amended by adding the following new section:

"**§ 135-40.3A. Optional participation for charter schools operated by private nonprofit corporations.**

(a) The board of directors of each charter school operated by a private nonprofit corporation shall elect whether to join the Plan in accordance with the laws applicable to that Plan. This election shall be in writing, shall be made no later than September 1, 1998, and shall be filed with the Executive Administrator and Board of Trustees and with the State Board of Education. For each charter school employee who is employed on or before the date the board makes the election, this election is effective as of the date the board makes the election. For each charter school employee who is employed after the date the board makes the election, the election is effective as of the date of that employee's entry into eligible service. This subsection applies only to charter schools that received State Board of Education approval under G.S. 115C-238.29D in 1997 or 1998.

(b) No later than 30 days after both parties have signed the written charter under G.S. 115C-238.29E, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to join the Plan in accordance with the laws applicable to that Plan. This election shall be in writing and filed with the Executive Administrator, the Board of Trustees, and the State Board of Education. This election is effective for each charter school employee as of the date of that employee's entry into eligible service. This subsection applies to charter schools that receive State Board of Education approval under G.S. 115C-238.29D after 1998.

(c) A board's election to join the Plan under this section is irrevocable and shall require all employees of the charter school to participate.

(d) If a charter school's board of directors does not elect to join the Plan under this section, that school's employees and the dependents of those employees are not eligible for any benefits under the Plan.

(e) The board of directors of each charter school shall notify each of its employees as to whether the board elected to join the Plan under this section. This notification shall be in writing and shall be provided within 30 days of the board's election or at the time an initial offer for employment is made, whichever occurs last. If the board did not elect to join the Plan, the notice shall include a statement that the employee shall have no legal recourse against the board or the State for any possible benefit under the Plan. The employee shall provide written acknowledgment of the employee's receipt of the notification under this subsection."

Section 6. G.S. 105-228.90(b) reads as rewritten:

"(b) Definitions. -- The following definitions apply in this Article:

(1) Reserved.

(2) Charter school board. -- A nonprofit corporation that has a charter under G.S. 115D-238.29D to operate a charter school.

~~(1)~~(3) City. -- A city as defined by G.S. 160A-1(2). The term also includes an urban service district defined by the governing board of a consolidated city-county, as defined by G.S. 160B-2(1).

~~(1a)~~(4) Code. -- The Internal Revenue Code as enacted as of January 1, 1997, including any provisions enacted as of that date which become effective either before or after that date.

~~(1b)~~(5) County. -- Any one of the counties listed in G.S. 153A-10. The term also includes a consolidated city-county as defined by G.S. 160B-2(1).

~~(2)~~(6) Reserved.

~~(3)~~(7) Electronic Funds Transfer. -- A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

~~(4)~~(8) Reserved.

~~(5)~~(9) Person. -- An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes.

~~(6)~~(10) Secretary. -- The Secretary of Revenue.

~~(7)~~(11) Tax. -- A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms "tax" and "additional tax" include penalties and interest as well as the principal amount.

~~(8)~~(12) Taxpayer. -- A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes."

Section 7. G.S. 105-449.88 reads as rewritten:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state.

(2) Motor fuel sold to the federal government.

(3) Motor fuel sold to the State for its use.

(4) Motor fuel sold to a local board of education for use in the public school system.

(5) Motor fuel sold to a charter school board for use for charter school purposes."

Section 8. G.S. 20-84 reads as rewritten:

"**§ 20-84. Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by the local chapters of American National Red Cross.**

The Division upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the State or any department thereof, or by any county, township, city or town, or by any board of education, or by any nonprofit corporation that has a charter under G.S. 115C-238.29D to operate a charter school, or by any orphanage or civil air patrol, or incorporated emergency rescue squad, or incorporated REACT ("Radio Emergency Association of Citizen Teams") Team, or for any motor vehicle involved exclusively in the support of a disaster relief effort, shall collect six dollars ($6.00) for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church-owned bus used exclusively for transporting children and parents to Sunday school and church services and for no other purpose.

In lieu of the annual six dollars ($6.00) registration provided for in this section, the Division may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles. The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Division shall collect a fee of six dollars ($6.00) for each vehicle so registered and licensed.

The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.

The Division of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of six dollars ($6.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full

payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to replacement vehicles to be used for the purposes above described and for which the plates were originally issued.

The Division of Motor Vehicles shall issue to the American National Red Cross, upon application of any local chapter thereof and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate, which need not be thereafter renewed, for all disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used for emergency or disaster work, and operated by a local chapter in this State in the business of the American National Red Cross. Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used for the purposes above described and for which the plates were originally issued. In the event of transfer of ownership to any other person, firm or corporation, or transfer or reassignment of any vehicle bearing such registration plate to any chapter or association of the American National Red Cross in any other state, territory or country, the registration plate assigned to such vehicle shall be surrendered to the Division of Motor Vehicles.

In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of six dollars ($6.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to him pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy thereof shall be furnished to the registration division of the Division. Information as to the individual assignments of such registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that such reassignment shall be made to appear upon the index required herein within 20 days after such reassignment.

The Division of Motor Vehicles shall, upon appropriate certification of financial responsibility, issue to sheltered workshops recognized or approved by the Division of Vocational Rehabilitation Services and to public and nonprofit agencies or organizations which provide transportation for or operate programs subject to and approved in accordance with standards adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services upon application and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate for vehicles registered to and operated by such agencies. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plate issued for such vehicle operated by a sheltered workshop and such plates need not

thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used by the sheltered workshop designated on the registration card.

On and after January 1, 1972, permanent registration plates used on all vehicles owned by the State of North Carolina or a department thereof shall be of a distinctive color and design which shall be readily distinguishable from all other permanent registration plates issued pursuant to this section or G.S. 20-84.1. For the purpose of carrying out the intent of this paragraph, all vehicles owned by the State of North Carolina or a department thereof in operation as of October 1, 1971, and bearing a permanent registration shall be reregistered during the months of October, November and December, 1971, and upon reregistration, registration plates issued for such vehicles shall be of a distinctive color and design as provided for hereinabove."

Section 9. G.S. 115C-238.29B(a) reads as rewritten:

"(a) Any person, group of persons, ~~or~~ nonprofit ~~corporation~~ corporation, or local board of education seeking to establish a charter school may apply to establish a charter school. If ~~the~~ an applicant other than a local board of education seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion. If a local board of education seeks a charter for a school, the application shall include a statement that the local board understands that no employee shall be required to work at the charter school and no student shall be assigned to the school except at the request of the student's parent or guardian."

Section 10. G.S. 115C-238.29B(b)(3) reads as rewritten:

"(3) The governance structure of the ~~school~~ school, if the applicant is not a local board of education, including the names of the proposed initial members of the board of directors of the nonprofit, tax-exempt corporation and the process to be followed by the school to ensure parental involvement."

Section 11. G.S. 115C-238.29B(b)(11) reads as rewritten:

"(11) The procedures by which students can be excluded from the charter school and returned to a public ~~school.~~ school other than a charter school. Notwithstanding any law to the contrary, any local board may refuse to admit any student who is suspended or expelled from a charter school due to actions that would lead to suspension or expulsion from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired."

Section 12. G.S. 115C-238.29B(c) reads as rewritten:

"(c) An applicant shall submit the application to a chartering entity for preliminary approval. A chartering entity may be:

(1) The local board of education of the local school administrative unit in which the charter school will be ~~located;~~ located, unless the applicant is a local board of education;

(2) The board of trustees of a constituent institution of The University of North Carolina, so long as the constituent institution is involved in the planning, operation, or evaluation of the charter school; or

(3) The State Board of Education.

Regardless of which chartering entity receives the application for preliminary approval, the State Board of Education shall have final approval of the charter school.

Notwithstanding the provisions of this subsection, if the State Board of Education finds that an applicant (i) submitted an application to a local board of education and received final approval from the State Board of Education, but (ii) is unable to find a suitable location within that local school administrative unit to operate, the State Board of Education may authorize the charter school to operate within an adjacent local school administrative unit for one year only. The charter school cannot operate for more than one year unless it reapplies, in accordance with subdivision (1), (2), or (3) of this subsection, and receives final approval from the State Board of Education."

Section 13. G.S. 115C-238.29B(d) is repealed.

Section 14. G.S. 115C-238.29D(b) is repealed.

Section 15. G.S. 115C-238.29E reads as rewritten:

"**§ 115C-238.29E. Charter school operation.**

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is located. It shall be accountable to the local board of education if the applicant for the charter is the local board of education or if it applied for and received preliminary approval from that local board for purposes of ensuring compliance with applicable laws and the provisions of its charter. All other charter schools shall be accountable to the State Board for ensuring compliance with applicable laws and the provisions of their charters, except that any of these charter schools may agree to be accountable to the local board of the school administrative unit in which the charter school is located rather than to the State Board.

(b) A charter school other than a charter school for which the applicant is a local board of education shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the application. A charter school for which the applicant is a local board of education shall be operated by the local board of education.

(c) ~~A charter school shall operate under the written charter signed by the entity to which it is accountable under subsection (a) of this section and the applicant. A charter school is not required to enter into any other contract. The charter shall incorporate the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the State Board of Education. No other terms may be imposed on the charter school as a condition for receipt of local funds.~~ The State Board shall issue the written charter no later than 30 days after the date on which the State Board grants final approval for the charter. The written charter shall incorporate the information provided in the application, as modified during the charter approval

process, and any terms and conditions applicable to all charter schools under the rules of the State Board. The charter school is not required to agree to any additional terms, whether requested by the State Board, the local board where the charter school is located, or the entity to which the charter school is accountable. No additional terms may be imposed on the charter school as a condition for receipt of local funds. The charter school shall operate under the written charter signed by the entity to which it is accountable and the applicant.

(d) The board of directors of the charter school operated by a private nonprofit corporation shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures. The local board of education shall decide these matters for a charter school operated by a local board.

(e) ~~A charter school's specific location~~ The specific location of a charter school operated by a private nonprofit corporation shall not be prescribed or limited by a local board or other authority except a zoning authority. The school may lease space from a local board of education or as is otherwise lawful in the local school administrative unit in which the charter school is located. If a charter school leases space from a sectarian organization, the charter school classes and students shall be physically separated from any parochial students, and there shall be no religious artifacts, symbols, iconography, or materials on display in the charter school's entrance, classrooms, or hallways. Furthermore, if a charter school leases space from a sectarian organization, the charter school shall not use the name of that organization in the name of the charter school.

At the request of the charter school, the local board of education of the local school administrative unit in which the charter school will be located shall lease any available building or land to the charter school unless the board demonstrates that the lease is not economically or practically feasible or that the local board does not have adequate classroom space to meet its enrollment needs. Notwithstanding any other law, a local board of education may provide a school facility to a charter school free of charge; however, the charter school is responsible for the maintenance of and insurance for the school facility.

(f) Except as provided in this Part and pursuant to the provisions of its charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit. The State Board shall not adopt any rules, policies, procedures, requirements, standards, terms, conditions, or regulations governing charter schools unless they are authorized specifically under this Part; they are applicable uniformly to all charter schools; and the Board proceeds under Chapter 150B of the General Statutes. Only those rules, policies, procedures, requirements, standards, terms, conditions, and regulations that are adopted by the Board shall apply to charter schools and may be included in the written charter and amendments to that charter. The Board may adopt guidelines to assist charter schools. These guidelines are not binding on charter schools and shall not be included in any written charter unless the charter school agrees to the inclusion."

Section 16. G.S. 115C-238.29F(b) reads as rewritten:

"(b) School Nonsectarian. -- A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge ~~tuition or~~ tuition, application fees, or admission fees. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution."

Section 17. G.S. 115C-238.29F(c) is amended by adding the following new subdivision:

"(3) The civil liability for a charter school operated by a local school administrative unit shall be the same as for any other school operated by the unit."

Section 18. G.S. 115C-238.29F(h) reads as rewritten:

"(h) Transportation. -- The charter school may provide transportation for students enrolled at the school. The charter school shall develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located. The charter school is not required to provide transportation to any student who lives within one and one-half miles of the school. At the request of the charter school and if the local board of the local school administrative unit in which the charter school is located operates a school bus system, then that local board may contract with the charter school to provide transportation in accordance with the charter school's transportation plan to students who reside in the local school administrative unit and who reside at least one and one-half miles of the charter school. A local board may charge the charter school a reasonable charge that is sufficient to cover the cost of providing this transportation. Furthermore, a local board may refuse to provide transportation under this subsection if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible to provide this transportation.

A student who attends a charter school operated by a local board of education and who resides within the local school administrative unit in which the school is located has the same right to school transportation as students assigned to other public schools in the local school administrative unit."

Section 19. G.S. 115C-238.29F(d) reads as rewritten:

"(d) Instructional Program. --

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the charter.

(3) A charter school shall ~~conduct the student assessments required for charter schools by the State Board of Education.~~ administer the tests adopted by the State Board of Education under G.S. 115C-174.11 and that are used to implement the School-Based Management and Accountability Program in other public schools.

(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with special needs.

(5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General Statutes, except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its charter."

Section 20. G.S. 115C-238.29F(g)(5) reads as rewritten:

"(5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. The charter school may give enrollment priority to siblings of currently enrolled students who were admitted to the charter school in a previous year and to children of the school's principal, teachers, and teacher assistants. In addition, and only for its first year of operation, the charter school may give enrollment priority to children of the initial members of the charter school's board of directors, so long as (i) these children are limited to no more than ten percent (10%) of the school's total enrollment or to 20 students, whichever is less, and (ii) the charter school is not a former public or private school. ~~Within one year after the charter school begins operation,~~ The charter school shall make a good faith effort to attract and enroll students so that the population of the school ~~shall~~ reasonably ~~reflect~~ reflects the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit."

Section 21. G.S. 115C-238.29G(c) reads as rewritten:

"(c) The State Board and the charter school are encouraged to make a good-faith attempt to resolve the differences that may arise between them. ~~They~~ Furthermore, the local board of the local school administrative unit in which the charter school is located and the charter school are encouraged to make a good-faith attempt to resolve any differences that may arise between them. The parties in dispute may agree to jointly select a mediator. The mediator shall act as a neutral facilitator of disclosures of factual information, statements of positions and contentions, and efforts to negotiate an agreement settling the differences. The mediator shall, at the request

of either ~~the State Board or a charter school,~~ party, commence a mediation immediately or within a reasonable period of time. The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A of the General Statutes governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement.

Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation proceedings shall be conducted in private. Evidence of statements made and conduct occurring in a mediation are not subject to discovery and are inadmissible in any court action. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. The mediator shall not be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation in any civil proceeding for any purpose, except disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators. The mediator may determine that an impasse exists and discontinue the mediation at any time. The mediator shall not make any recommendations or public statement of findings or conclusions. The ~~State Board and the charter school~~ parties in dispute shall share equally the mediator's compensation and expenses. The mediator's compensation shall be determined according to rules adopted under Chapter 7A of the General Statutes."

Section 22. G.S. 115C-238.29H reads as rewritten:

"**§ 115C-238.29H. State and local funds for a charter school.**

(a) The State Board of Education shall allocate to each charter school (i) an amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school except for the allocation for children with special needs and (ii) an additional amount for each child attending the charter school who is a child with special needs. In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual adjustments to the amount allocated to a charter school based on its enrollment growth in school years subsequent to the initial year of operation.

In the event a child with special needs leaves the charter school and enrolls in a public school during the first 60 school days in the school year, the charter school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with special needs enrolls in a charter school during the first 60 school days in the school year, the State Board shall allocate to the charter school the pro rata amount of additional funds for children with special needs.

(a1) Funds allocated by the State Board of Education may be used to enter into operational and financing leases for real property or mobile classroom units for use as school facilities for charter schools and may be used for payments on loans made to charter schools for facilities or equipment. However, State funds shall not be used to obtain any other interest in real property or mobile classroom units. No indebtedness of any kind incurred or created by the charter school shall constitute an indebtedness

of the State or its political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the State or its political ~~subdivisions.~~ subdivisions, unless the charter school is operated by a local board of education. Every contract or lease into which a charter school enters except for contracts or leases entered into by a local board of education shall include the previous sentence. The school also may own land and buildings it obtains through non-State sources.

(b) If a student attends a charter school, the local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year. The per pupil local current expense appropriation shall be calculated by dividing the total county appropriation to the local school administrative unit's local current expense fund, including appropriations funded by supplemental taxes, by the unit's average daily membership for the budget year as determined by and certified to the unit and the board of county commissioners by the State Board. In order to establish the number of children for whom these funds are to be transferred, the local administrative unit may require the charter school to provide electronically an invoice that identifies each child for whom these funds are to be remitted, that child's address, and that child's Student Information Management System identification number. The local school administrative unit shall not require any other information from the charter school as a condition of the unit's remission of these funds. If the local school administrative unit requires this invoice, the unit shall provide to the charter school the local current expense appropriation based on the number of children in the most recent invoice. If no invoice is required, the local current expense appropriation shall be based on the number of children as mutually agreed upon by the local school administrative unit and the charter school. The local school administrative unit shall remit these funds to the charter school at times that are mutually agreed upon by the unit and the charter school, but if no agreement is reached, then the unit shall remit these funds to the charter school no later than one week after the unit receives the funds from the board of county commissioners as established under G.S. 115C-437 and upon receipt of an invoice, if required. The State Board may withhold money used for payment of salaries for the superintendent and school finance officer of any local school administrative unit if the Board finds that the unit is not using its best efforts to remit these funds on a timely basis.

(c) The board of county commissioners of the county in which the charter school is located may allocate to the charter school funds that may be used for capital outlay purposes."

Section 23. G.S. 115C-452 reads as rewritten:

"**§ 115C-452. Fines and forfeitures.**

The clear proceeds of all penalties and forfeitures and of all fines collected in the General Court of Justice in each county shall be remitted by the clerk of the superior court to the county finance officer, who shall forthwith determine what portion of the total is due to each local school administrative unit and to each charter school in the county and remit the appropriate portion of the amount to the finance officer of each

local school administrative ~~unit.~~ unit and each charter school. ~~Fines~~ The first twenty-five percent (25%) of 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. The remainder of the fines and forfeitures shall be apportioned according to the projected average daily membership of each local school administrative unit and each charter school as determined by and certified to the local school administrative units, the charter schools, and the board of county commissioners by the State Board of Education pursuant to G.S. 115C-430 or G.S. 115C-238.29H(b)."

Section 24. G.S. 115C-457.3 reads as rewritten:

"**§ 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~~ The first twenty-five percent (25%) of these funds shall be allocated to local school administrative units on the basis of average daily membership. The remaining funds shall be allocated to local school administrative units and charter schools on the basis of average daily membership. Notwithstanding any other law, the funds allocated to charter schools under this section shall be used for school technology; however, in accordance with G.S. 115C-238.29E(f), the charter school is not required to develop or submit a school technology plan under Part 3A of Article 8 of this Chapter."

Section 25. (a) G.S. 150B-2(8a) reads as rewritten:

"(8a) 'Rule' means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term also includes any State Board of Education or Department of Public Instruction rule, policy, procedure, requirement, standard, term, condition, or regulation that is authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes. The term does not include the following:

a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.

b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational

licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.

c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

e. Statements of agency policy made in the context of another proceeding, including:

1. Declaratory rulings under G.S. 150B-4.

2. Orders of establishing or fixing rates or tariffs.

f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.

g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.

h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.

j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.1 and the variable component of the excise tax on motor fuel under G.S. 105-449.80."

(b) Article 2A of Chapter 150B of the General Statutes is amended by adding the following new Part:

"Part 6. Rules Affecting Charter Schools.

"**§ 150B-21.30. Procedures applicable to rules affecting charter schools.**

(a) G.S. 150B-21.2(a)(1) shall not apply to proposed rules adopted by the State Board of Education if the proposed rules are authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes.

(b) Notwithstanding G.S. 150B-21.3(b), a permanent rule that is adopted by the State Board of Education, is approved by the Rules Review Commission, and is authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes, becomes effective five business days after the Commission delivers the rule to the Codifier of Rules, unless the rule specifies a later effective date. If the State Board of Education specifies a later effective date, the rule becomes effective upon that date. A permanent rule that is adopted by the State Board of Education to

implement Part 6A of Article 16 of Chapter 115C of the General Statutes, but is not approved by the Rules Review Commission, shall not become effective.

(c) G.S. 150B-21.4(b1) shall not apply to permanent rules the State Board of Education proposes to adopt if those rules are authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes.

(d) The rule proposed by the State Board of Education may create, amend, or repeal a rule. The State Board of Education shall indicate in the notice of proposed text that the rule is authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes and that the State Board of Education is proceeding under that authority.

"**§ 150B-21.31. Procedures applicable to charters.**

The State Board of Education shall submit to the Commission the standard written charter agreement that the State Board of Education approved and issued under Part 6A of Article 16 of Chapter 115C of the General Statutes to charter schools that received State Board approval under G.S. 115C-238.29D in 1997 or 1998. The State Board of Education also shall submit to the Commission any modifications to that written charter agreement that the State Board approves after July 1, 1998, for issuance to charter schools approved in subsequent years. The Commission shall review each portion of the charter and each modification to that charter as if it is a rule and shall follow the procedure established in Part 3 of this Article. The Commission shall determine whether each portion or modification is authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes. The Commission may approve only portions and modifications of the charter that are so authorized. All approved portions and modifications of the charter are binding on the charter school. Each portion or modification of the charter that is not approved is void and shall not apply to any charter school unless the charter school's board of directors agrees to its applicability. The board of directors is not required to agree to any portion or modification of the charter that the Commission does not approve. This section shall not apply to information in a charter school's application, as modified during the approval process, that is incorporated in each charter school's charter agreement."

Section 26. (a) The State Board of Education, in collaboration with the Charter School Professional Association, shall evaluate the Uniform Education Reporting System to determine whether this is the best way for charter schools to report information to the State Board or whether there is a mutually functional alternative that could be implemented. The State Board shall report the results of this evaluation and its recommendations, including any proposed legislative changes, to the Joint Legislative Commission on Governmental Operations by December 1, 1998.

(b) If, at any time, a majority of charter schools present to the State Board of Education an alternative reporting system that is the functional equivalent of the Uniform Education Reporting System and the alternative system has been benchmarked, the State Board shall consider the adoption of that system for charter schools.

Section 27. G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. -- A governmental entity listed in this subsection is allowed an annual refund of sales and use ~~tax~~ taxes paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(2b) A local school administrative unit for charter schools operated by the local board of education. Notwithstanding any other provisions of law, a refund payable under this subdivision of the local sales and use taxes to cities levied under Articles 39, 40, and 42 of this Chapter and under the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the 1967 Session Laws, as amended, shall be drawn from the General Fund and shall not be deducted from the distribution to the cities.

(3) A metropolitan sewerage district or a metropolitan water district in this State.

(4) A water and sewer authority created under Chapter 162A of the General Statutes.

(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.

(6) A sanitary district.

(7) A regional solid waste management authority created pursuant to G.S. 153A-421.

(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.

(9) A district health department.

(10) A regional council of governments created pursuant to G.S. 160A-470.

(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.

(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.
(16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:
a. It has all of the rights of a municipality.
b. A local act of the General Assembly declares it to be a municipality.
c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.
(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.
(18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.
(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.
(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.
(21) The University of North Carolina Hospitals at Chapel Hill."

Section 28. This act becomes effective July 1, 1998. Section 27 of this act applies to taxes paid on or after January 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1739 (Proposed Committee Substitute)

SHORT TITLE: Retirement/Charter Schools

SPONSOR(S):

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Revenue loss to local schools of criminal fines and forfeitures	($462,765)	($811,647)	($1,120,978)	($1,450,217)	($1,800,641)
Revenue loss to local schools from the School Technology Fund of funds from fines and. Forfeitures	($37,109)	($64,156)	($87,341)	($111,379)	($136,316)
Highway Fund Motor Fuels Tax	$19,780	$33,122	$43,439	$53,327	$62,894
License Tags	Some revenue loss but no estimate available				
EXPENDITURES					
Additional administrative costs to the Department of Public Instruction and the Local Government Commission for additional charter schools.	$491,209*	$93,855	$112,000	$112,000	$112,000

* Funds requested by the State Board of Education for FY1998-99

POSITIONS:
FY1998-99
Department of Public Instruction 4
Local Government Commission 2

Exact numbers of personnel for future years cannot be determined

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Education, Department of Public Instruction , Department of Transportation, Local school systems, county governments, State Retirement System, and State Health Plan.

EFFECTIVE DATE: July 1, 1998

BILL SUMMARY:

SECTION 1 would amend G.S. 115C-238.29F(3)(4) to clarify that while all charter school employees are public employees, they will be eligible for participation in the State Retirement System, State Health Plan, or both, only if their charter school's board of directors elect to participate.

SECTION 2 would create a new G.S. 135-5.3 to require charter school boards of directors to elect, in writing, to join the State Retirement System. This would be an irrevocable election. The boards of directors of charter schools that received State Board of Education approval in 1997 or 1998 must make this election by September 1, 1998. The election would be effective on the date the election is made for current employees. For employees hired after that date, it would be effective on their date of entry into eligible service. The boards of directors of charter schools that receive State Board of Education approval after 1998 must make the election within 30 days after the State Board of Education and the charter school applicant sign the written charter agreement. This election would be effective for all employees on their date of entry into eligible service. The boards of directors must notify in writing their employees as to whether they elected to join, and the employees must acknowledge in writing that they received this notice.

SECTION 3 would amend G.S. 135-4 to allow charter school employees who subsequently return to a public school or State employment to "buy back" years of service for the time they were employed in a charter school whose board of directors did not elect to join the Retirement System. To be eligible for this "buy-back", the employee would be required to have at least five years of creditable service.

SECTIONS 4 and 5 would provide that only employees of charter schools whose boards of directors elect to join the State Health Plan are eligible for participation

in that Plan. The election, and its applicability, is similar to the election to participate in the Retirement System.

SECTIONS 6 and 7 would exempt from the motor fuel tax any motor fuel sold to the nonprofit corporations that have charters to operate charter schools. Motor fuel sold to local boards of education is currently exempt from this tax.

SECTION 8 would amend G.S. 20-84 to allow nonprofit corporations that have charters to operate charter schools to pay a one-time fee of $6.00 for each permanent vehicle registration plate for each vehicle they register. Currently, local boards of education may purchase these permanent plates.

SECTION 9 would repeal G.S. 115C-238.29B(d), which allows local boards of education to offer information concerning an application for a charter school. This subsection also requires the State Board, when determining whether to approve an application, to consider this information and the impact of the charter school on the local school administrative unit's ability to provide a sound basic education to its students.

SECTION 10 would repeal G.S. 115C-238.29D(b), which limits the number of charter schools to a total of 100 in the State and to no more than five per year per local school administrative unit.

SECTION 11 would amend G.S. 115C-238.29F(b) to allow charter schools to charge fees, so long as they are not application or admission fees.

SECTION 12 would amend G.S. 115C-238.29G(c) to provide for a mediation process between charter schools and local boards of education.

SECTIONS 13 and 14 would amend G.S. 115C-238.29H. Currently, the local school administrative unit where a child resides must transfer the per pupil local current expense appropriation to the charter school. Section 13 would define this appropriation to include revenue from all sources of funds, including any supplemental taxes, that go into a county's appropriation to the local school administrative unit's local current expense fund. This section also would require a local school administrative unit to remit the funds at times as agreed upon by the unit and the charter school or on the same timeline as they receive the funds from the county. In most cases, this would be on a monthly basis, but it could be on a quarterly or yearly basis. Section 13 also would allow local school administrative units to request an invoice with the child's name, address, and SIMS identification number in order to determine the number of students for whom this appropriation is to be made. If an invoice is required, the local school administrative unit must use the number of students as the basis for the appropriation to the charter school. Failure to remit these funds in a timely manner could result in the State Board's withholding of funds used to pay the salaries of the superintendent and school finance officer. Section 14 would allow county commissioners to allocate to a charter school funds to be used for capital outlay purposes.

SECTIONS 15 and 16 would amend G.S. 115C-452 and G.S. 115C-457.3 to require proceeds from fines, forfeitures, and penalties to be apportioned to charter schools. Section 7 of Article IX of the North Carolina Constitution states, "All moneys, stocks, bonds, and other property belonging to a county school fund, and 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." The committee substitute would provide that the first 25% of these funds would continue to be apportioned only among local school administrative units. The remainder of the funds would be apportioned among local school administrative units and charter schools. Funds from the Civil Penalty and Forfeiture Fund, which are transferred first to the State School Technology Fund, must be used for school technology, but the charter schools are not required to develop and implement school technology plans.

SECTION 17 would amend G.S. 115C-238.29E to require the State Board to issue a written charter within 30 days following the date it grants final approval for a charter. The charter incorporates the information in the application, as modified during the approval process, and any terms and conditions applicable to all charter schools. Currently, these terms and conditions are not required to be applicable on a uniform basis. **Subsection (b)** of this section would amend G.S. 115C-238.29E(f) to require the State Board to go through rulemaking before any rule, policy, procedure, requirement, standard, term, condition or regulation is applicable to charter schools. These "rules" must apply to all charter schools and must be authorized specifically by the Charter School Act. **Subsection (c)** would amend G.S. 150B-2(8a) to include any State Board of Education or Department of Public Instruction rule, policy, procedure, requirement, standard, term, condition, or regulation that is authorized under the Charter School Act in the definition of a "rule" for the purpose of the Administrative Procedure Act. **Subsection (d)** adds a new Part 6, Rules Affecting Charter Schools, to the Administrative Procedure Act. G.S. 150B-21.30 would allow the State Board to use a streamlined procedure for adopting rules specifically authorized by the Charter School Act. The Board may publish the text of any proposed rule as the first step in the rulemaking procedure; a rule may take effect without waiting for submission to the General Assembly; and no fiscal note is required unless the rule affects the expenditures or revenues of a unit of local government. The State Board must indicate on its notice that the rule is authorized specifically by the Charter School Act. G.S. 150B-21.31 would require the State Board to submit to the Rules Review Commission the standard written charter agreement that the Board has approved and issued to charter schools to date. The Commission must review each portion of the charter agreement, and each subsequent modification to that charter agreement, as if it is a rule. The Commission may approve only the portions and modifications that are authorized specifically under the Charter School Act. If they are approved, then they are binding on the charter schools. If they are not approved, then they are void and will apply only if a charter school's board of directors agrees to its applicability.

SECTION 18 would require the State Board of Education, in collaboration with the Charter School Professional Association, to evaluate whether the Uniform Education Reporting System (UERS) is the best way for charter schools to report information or whether there is a mutually functional alternative that could be implemented. The Board must report the results of this evaluation to the Joint Legislative Commission on Governmental Operations by December 1, 1998. SECTION 18 also would require the State Board to consider the adoption of an alternative reporting system that a majority of charter schools present to the Board if is the functional equivalent of the UERS and if it has been benchmarked.

The bill would take effect July 1, 1998.

ASSUMPTIONS AND METHODOLOGY:

1. Projected loss of criminal fines and forfeiture funds to local school systems based on no limit on the number of charter schools as set out in the committee substitute. Projected enrollment growth is based on the addition of 30 charter schools each year for the next four years, plus enrollment growth of 10% per year in existing charter schools. These enrollment projects are set out in the table below.
2. Additional administrative costs in the Department of Public Instruction are based on FY1998-99 requested by the State Board of Education, plus the removal of the limit on the number of charter schools contained in the committee substitute.
3. There will be some minor loss to the Highway Fund as charter schools receive permanent vehicle licenses, but the loses cannot be calculated.
4. Highway Fund loses will also include loss of motor vehicle tax.
5. Projected loss of administrative fines and forfeiture funds to local school systems through the School Technology Fund are based on a growth of 3.5% percent in administrative penalties, and the enrollment growth assumptions in 1 and 2.
6. The projection of the loss to local school systems of administrative fines and forfeitures is based on the Attorney General's Office interpretation of current court decisions. There is still in excess of $40 million in state funds that are still in dispute. The largest of the disputed amounts are taxes levied for failure to file or pay taxes, parking fees in the university system, and fees levied by various departments and licensing boards. If the Court determines in a later case that schools are entitled to these funds then the amounts received by charter schools through the technology fund would greatly increase.
7. All costs to the retirement system and the state health plan are reported in separate actuarial notes.

Projected Public School ADM Versus Projected Charter Schools

	FY97-98	FY98-99	FY99-00	FY00-01	FY01-02	FY02-03
Total ADM	1,227,015	1,251,287	1,274,766	1,291,552	1,307,563	1,325,042
Charter ADM	6,587	12,588	21,421	28,548	35,610	42,672

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: James D. Johnson
APPROVED BY: Tom Covington

DATE: June 22, 1998

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE ACTUARIAL NOTE

BILL NUMBER: Committee Substitute House Bill 1739

SHORT TITLE: Charter School Benefits

SPONSOR(S): Representative Leo Daughtry

SYSTEM AFFECTED: The Teachers' and State Employees' Retirement System

BILL SUMMARY: : Require each charter school boards of directors to make an irrevocable election, in writing, whether the employees of the school will be members of the Teachers' and State Employees' Retirement System. The boards of directors of charter schools must make this election by September 1, 1998. The election would be effective on the date the election is made for current employees. For employees hired after that date, it would be effective on their date of entry into eligible service. For charter schools approved after 1998, the election must be made with 30 days after the charter agreement is signed. This election would be effective for all employees on their date of entry into eligible service. The boards of directors must notify in writing their employees as to whether they elected to join, and the employees must acknowledge in writing that they received this notice.

The bill also allows charter school employees, who subsequently return to a public school or state employment, to purchase the years of service that they were employed in a charter school, whose board of directors did not elect to join the Retirement System. To be eligible for this purchase, the member must complete five years of creditable service after the charter school employment and the member must pay the "full actuarial cost" for the service purchase.

EFFECTIVE DATE: July 1, 1998.

ESTIMATED IMPACT ON STATE: ESTIMATED IMPACT

Retirement System Actuary: Buck Consultants states that there is anti-selection against the Retirement System since some boards with older, higher cost employees have chosen to join the System and those with younger, lower cost employees have chosen not to participate. Buck Consultants estimates there would be no cost to the Retirement System for any purchases of charter school employment since the members would be paying the "full actuarial cost".

General Assembly Actuary: Hartman & Associates states, that if the demographics of the employees of the charter schools electing coverage is similar to the current covered employees in the State System, the current rate is sufficient, but since each employer will make an election, the potential exists for anti-selection on the part of the schools. The data, of current 623 charter school employees of which 130 are participating in the Retirement System, reveals that anti-selection is occurring, as the participating rate for employees over age 40 is more than double that for employees under age 40.

Hartman & Associates estimates there would be no cost to the Retirement System for any purchases of charter school employment since the members would be paying the "full actuarial cost".

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.

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
APPROVED BY: Tom Covington

DATE: June 18, 1998

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE ACTUARIAL NOTE

BILL NUMBER: House Bill 1739, Sections 5, 6, & 20

SHORT TITLE: Charter Schools

SPONSOR(S): Representative Leo Daughtry

SYSTEM OR PROGRAM AFFECTED: Teachers' and State Employees' Comprehensive Major Medical Plan.

FUNDS AFFECTED: State General Fund, State Highway Fund, Other State Employer Receipts, Premium Payments for Dependents by Active and Retired Teachers and State Employees, and Premium Payments for Coverages Selected by Eligible Former Teachers and State Employees.

BILL SUMMARY: The bill gives charter schools the opportunity to make an irrevocable election to either participate in the Teachers' and State Employees' Comprehensive Major Medical Plan or not to participate in the Plan. Participation in a State Retirement Systems program would no longer be required for charter schools to participate in the Plan. Schools approved by the State Board of Education for operation in 1997 or 1998 must make the election prior to September 1, 1998. Schools approved for operation after 1998 must make the election within 30 days after a charter is signed. A school's election to participate in the Plan requires that all of the school's employees participate in the Plan if they want employer-sponsored health benefits. A school's election not to participate in the Plan will prevent any of the school's employees and their eligible dependents from being eligible for the Plan's benefits.

EFFECTIVE DATE: July 1, 1998.

ESTIMATED IMPACT ON STATE: Based upon data provided by the N. C. Department of Public Instruction on the number of employees of charter schools and their spouses and dependent children that are provided employer-sponsored health benefits, the Teachers' and State Employees' Comprehensive Major Medical Plan has suffered from adverse selection against the Plan by the charter school employee population. Of a total population of 1,443 employees and dependents in charter school sponsored health benefit programs, only 77 maintained coverage under the Plan, including its health maintenance organization (HMO) options. The remaining population of 1,366 enrollees fall in the following age bands: 49% under age 30; 59% under age 35; and 71% under age 40. By comparison, the indemnity program of the Plan has only 35% of its population under age 30; 42% under age 35; and 50% under age 40 in its active employee group. Conversely, the Plan's indemnity program for the active employee group has 49% of its population between the ages of 40 and 64 whereas the charter school population has only 28% of its total membership in the same age band. Furthermore, the charter school population that maintained coverage in the Plan reflected an age distribution closer to that of the indemnity program: 44% under age 30; 55% under age 35; 57% under age 40; and 42% between the ages of 40 and 64. As an indication that older age populations cost more to insure for health

coverage, for the year ended December 31, 1997, the Plan's indemnity program had a per capita claim cost of $722 for those under age 30; $1,355 for those age 30-44; $1,975 for those age 45-54; and $3,196 for those age 55-64. For those under age 65, the indemnity program's average annual per capita claim cost was $1,616, which is the claim cost basis upon which a single community rated premium of $1,735 is set for those under age 65 in the program. Adverse or anti-selection occurs whenever the indemnity program loses $1,735 annually per person in premium receipts but loses only $722 in per capita annual claim costs for those persons under age 30 and only $1,355 for those between the ages of 30 and 44. Both the Plan's consulting actuary, Aon Consulting, and the consulting actuary of the General Assembly's Fiscal Research Division, Hartman & Associates, confirm that anti-selection has already occurred in the Plan from charter school employees and their dependents opting out of the Plan. As the number of charter schools increases, this trend is also expected to increase resulting in more costs to the Plan as charter schools are given more opportunities to opt out of the Plan. An additional cost impact on the State apart from anti-selection against the Major Medical Plan comes from removing the requirement that participation in the Plan is contingent upon participation in a State Retirement Systems program. Currently, each employer's contribution rate as a percentage of payroll to the State Retirement Systems includes a 2% surcharge used by the Retirement Systems to pay premiums to the Major Medical Plan on behalf of retired teachers and state employees. Under the bill, a charter school could elect not to participate in a program offered by the State Retirement Systems but elect to participate in the Major Medical Plan. Participation in the Plan would allow those charter school employees with previously earned vested retirement benefits to receive those benefits as well as non-contributory retiree health benefits. In such a situation, the State Retirement Systems would not be receiving the 2% surcharge from charter school retirement contributions in order to pay for the health benefit premiums of employees retired from charter schools. At some future date, the 2% surcharge on employer contributions to the State Retirement Systems might have to be increased to those employers participating in the Systems' programs to pay for the health benefit premium costs of retired employees of charter schools that don't participate in the Retirement System. Of course, the incidence of these situations would become lower with charter schools' hiring of younger employees.

ASSUMPTIONS AND METHODOLOGY: The Comprehensive Major Medical Plan for Teachers and State Employees is divided into two programs. From October, 1982, through June, 1986, the Plan had only a self-funded indemnity type of program which covered all employees, retired employees, eligible dependents of employees and retired employees, and eligible former employees and their eligible dependents authorized to continue coverage past a termination of employment other than for retirement or disability purposes. A prepaid program of coverage by health maintenance organizations (HMOs) was offered in July, 1986, as an alternative to the Plan's self-insured indemnity program. The benefits of the self-insured indemnity type of program are spelled out in Part 3 of Article 3 of Chapter 135 of the North Carolina General Statutes (i.e., $250 annual deductible, 20% coinsurance up to $1,000 annually, etc. paid by the program's members). HMOs are required to offer benefits that are comparable to those provided by the self-insured indemnity program. Employer-paid non-contributory premiums are only authorized for the indemnity program's coverage for employees and retired employees. Whenever employees and office holders first employed or taking office on and after October 1, 1995 become eligible for health benefits as retired employees, the amount of premium paid by the State for individual coverage

will be based upon the retiree's amount of retirement service credit at the time of retirement. Only retired employees with 20 or more years of service credit at retirement will be eligible for non-contributory health benefit premiums. Retirees with 10 or more years of service credit at retirement will be eligible for 50% partially contributory health benefit premiums. Retired employees with 5 or more year of service credit at retirement will be eligible to continue their health benefits on a fully contributory basis. All other types of premium in the indemnity program are fully contributory. Premiums paid by employers to HMOs are limited to like amounts paid to the indemnity program with employees and retired employees paying any HMO amounts above the indemnity program's non-contributory rates. Both types of coverage continue to be available in the Plan with twelve HMOs currently covering about 27% of the Plan's total population in about 88 of the State's 100 counties. The Plan's employees and retired employees select the type of program that they wish for themselves and their dependents during the months of August and September of each year for coverage beginning in October. The demographics of the Plan as of December 31, 1997, include:

	Self-Insured Indemnity Program	Alternative HMOs	Plan Total
Number of Participants			
Active Employees	183,500	78,500	262,000
Active Employee Dependents	102,000	56,400	158,400
Retired Employees	87,100	6,400	93,500
Retired Employee Dependents	14,600	1,300	15,900
Former Employees & Dependents with Continued Coverage	2,700	900	3,600
Total Enrollments	389,900	143,500	533,400
Number of Contracts			
Employee Only	207,000	57,500	264,500
Employee & Child(ren)	29,000	17,200	46,200
Employee & Family	36,500	10,800	47,300
Total Contracts	272,500	85,500	358,000
Percentage of Enrollment by Age			
29 & Under	26.8%	44.5%	31.5%
30-44	20.6	27.2	22.4
45-54	20.5	18.2	19.9
55-64	14.3	7.6	12.5
65 & Over	17.8	2.5	13.7
Percentage of Enrollment by Sex			
Male	39.6%	39.7%	39.6%
Female	60.4	60.3	60.4

Assumptions for the Self-Insured Indemnity Program: For the fiscal year beginning July 1, 1997, the self-insured program started its operations with a beginning cash balance of $384.9 million. Receipts for the year are estimated to be $580 million from premium collections, $25 million from investment earnings, and $15 million in risk adjustment and administrative fees from HMOs, for a total of $620 million in receipts for the year. Disbursements from the self-insured program are expected to be $640 million in claim payments and $18 million in administration and claims processing expenses for a total of $658 million for the year beginning July 1, 1997.

For the fiscal year beginning July 1, 1998, the self-insured indemnity program is expected to have an operating cash balance of over $346 million with a net operating loss of $98 million for the 1998-99 fiscal year. For the fiscal year beginning July 1, 1999, the self-insured indemnity program is expected to have an operating cash balance of $248 million with a net operating loss of $170 million for the 1999-2000 fiscal year. The estimated cash balance for the self-insured indemnity program is expected to be $78 million at the end of the 1999-2000 fiscal year. The self-insured indemnity program is consequently assumed to be able to carry out its operations without any increases in its current premium rates or a reduction in existing benefits until the 1999-2000 fiscal year. This assumption is predicated upon the fact that the program's cost containment strategies (hospital DRG reimbursements, pre-admission hospital testing, pre-admission hospital inpatient certification with length-of-stay approval, hospital bill audits, required second surgical opinions, mental health case management, coordination of benefits with other payers, Medicare benefit "carve-outs", cost reduction contracts with participating physicians and other providers, prescription drug manufacturer rebates from voluntary formularies, and fraud detection) are maintained and improved where possible. Current non-contributory premium rates are $110.08 monthly for employees whose primary payer of health benefits is Medicare and $144.60 per month for employees whose primary payer of health benefits is not Medicare. Fully contributory premium amounts for employee and child(ren) contracts are $68.50 monthly for children whose primary payer of health benefits is Medicare and $90.12 monthly for other covered children, and $164.30 per month for family contracts whose dependents have Medicare as the primary payer of health benefits and $216.18 per month for other family contract dependents. Claim cost trends are expected to increase 8-10% annually. Total enrollment in the program is expected to decrease about one percent (1.0%) annually due to competition from alternative HMOs. The number of enrolled active employees is expected to show a 1-2% loss annually, whereas the growth in the number of retired employees is assumed to be 4% per year. The program is expected to lose about 3-4% of its number of active employee dependents each year, whereas the number of enrolled retiree dependents is assumed to show no appreciable change from year to year. Investment earnings are based upon a 5% monthly return on available cash balances. The self-insured indemnity program maintains a claim stabilization reserve for claim cost fluctuations equal to 7.5% of annual claim payments without reserving additional funds for incurred but unreported claims.

Assumptions for Charter Schools' Participation in the Plan: Some 623 employees are employed in the 33 charter schools currently in operation in the State. Thirty-two of the schools sponsor a form of health benefits for their employees. One school's employees declined health benefit coverage. Of the 32 schools that sponsor a form of health benefits, only 2 have elected to participate in the Teachers' and State Employees' Comprehensive Major Medical Plan. The following ages apply to the employees and their dependents participating in some form of employer-sponsored health benefits in the 32 schools:

	Charter School Group in Plan						Charter School Group out of Plan					
Ages	Employ.	%	Depend.	%	Total	%	Employ.	%	Depend.	%	Total	%
0-4	0	0	7	15	7	9	0	0	89	11	89	6
5-9	0	0	7	15	7	9	0	0	141	18	141	10
10-14	0	0	7	15	7	9	0	0	116	15	116	8
14-19	0	0	9	19	9	12	0	0	91	12	91	7
20-24	1	3	1	2	2	3	51	9	39	5	90	7

25-29	2	7	0	0	2	3	109	18	39	5	148	11
30-34	5	18	3	6	8	10	90	15	44	6	134	10
[illegible]-39	1	3	1	2	2	3	107	18	54	7	161	12
[illegible]-44	6	20	4	9	10	13	72	12	52	7	124	9
45-49	9	30	3	6	12	15	69	12	43	6	112	8
50-54	3	10	3	6	6	8	54	9	35	4	89	6
55-59	1	3	2	5	3	4	23	4	17	2	40	3
60-64	1	3	0	0	1	1	13	2	8	1	21	2
65+	1	3	0	0	1	1	5	1	5	1	10	1
Total	30	100	47	100	77	100	593	100	773	100	1,366	100

Comparison of the total charter school population with that of the active group of the indemnity program of the Teachers' and State Employees' Comprehensive Major Medical Plan reveals the following:

	Total Charter School Group						State Employee Indemnity Group					
Ages	Employ.	%	Depend.	%	Total	%	Employ.	%	Depend.	%	Total	%
0-4	0	0	96	11	96	7	0	0	10,213	10	10,213	4
5-9	0	0	148	18	148	10	0	0	14,740	14	14,740	5
10-14	0	0	123	15	123	9	0	0	19,338	19	19,338	7
15-19	0	0	100	12	100	7	85	0	21,352	21	21,437	7
20-24	52	8	40	5	92	6	5,509	3	10,818	11	16,327	6
25-29	111	18	39	5	150	10	16,385	9	1,752	2	18,137	6
30-34	95	15	47	6	142	10	17,274	9	1,623	2	18,897	7
35-39	108	17	55	7	163	11	22,516	12	2,624	2	25,140	9
40-44	78	13	56	7	134	9	30,512	17	3,960	4	34,472	12
45-49	78	13	46	6	124	9	35,230	19	5,208	5	40,438	14
50-54	57	9	38	4	95	7	29,043	16	4,736	5	33,779	12
[illegible]-59	24	4	19	2	43	3	17,739	10	3,241	3	20,980	7
[illegible]-64	14	2	8	1	22	1	7,798	4	1,836	2	9,634	3
[illegible]5+	6	1	5	1	11	1	2,000	1	484	0	2,484	1
Total	623	100	820	100	1,443	100	184,091	100	101,925	100	286,016	100

SOURCES OF DATA:

-Actuarial Note, Hartman & Associates, House Bill 1739, Sections 5, 6, & 20, June 18, 1998, original of which is on file in the General Assembly's Fiscal Research Division.

-Actuarial Note, Aon Consulting, House Bill 1739, Sections 5, 6, & 20, June 18, 1998, original of which is on file with the Comprehensive Major Medical Plan for Teachers and State Employees and the General Assembly's Fiscal Research Division.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Sam Byrd.
APPROVED BY: Tom L. Covington.

DATE: June 19, 1998.

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TO: House Finance Committee
FROM: Robin S. Johnson, Staff Attorney
DATE: July 8, 1998
RE: **SECTION-BY-SECTION SUMMARY: H1739 – 3rd EDITION**

House Bill 1739, 3rd edition, allows charter schools to elect to participate in the State Health Plan and in the State Retirement Plan, to obtain permanent license plates at a cost of $6, and to obtain a motor fuel tax exemption. It allow a local board of education to apply for charter status for one or more of its public schools and to obtain an annual refund of sales and use tax paid by it for those charter schools. Lastly, it requires rules governing charter schools to be subject to the rules review process.

The tax provisions of the bill are contained in **SECTIONS 6, 7, AND 27:**

SECTIONS 6 and 7 would exempt from the motor fuel tax any motor fuel sold to the nonprofit corporations that have charters to operate charter schools. The fuel must be used by the charter school board for charter school purposes. Motor fuel sold to local boards of education is currently exempt from this tax when the fuel is used in the public school system. The majority of this fuel is used for buses and vans that transport students to and from school.

SECTION 27 would add charter schools operated by local boards of education to the list of governmental entities that may obtain an annual refund of the State and local sales and use taxes paid by them. Other nonprofit charter schools may obtain a semiannual refund of sales and use taxes under current law. **SECTION 27** also holds cities harmless for any revenue loss attributable to local sales and use taxes by providing that the cities share of the refund will not be deducted from the distribution to cities but from the State's General Fund. The section becomes effective January 1, 1999, and applies to purchases made on or after that date.

On July 7, 1998, the House Finance Committee passed Senate Bill 77. Under that bill, local school administrative units may obtain a refund of the State and local sales and use tax paid by them, effective July 1, 1998. Charter schools operated by local boards of education will be covered under Senate Bill 77. To that extent, this section duplicates Senate Bill 77. However, if both bills pass as they are currently written, effective January 1, 1999, the State will begin holding the cities harmless from any revenue loss attributable to sales to charter schools operated by local school administrative units.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

The remaining sections of the bill are explained below:

SECTION 1 would amend G.S. 115C-238.29F(e)(4) to clarify that while all charter school employees are public employees,[1] they will be eligible for participation in the State Retirement System, State Health Plan, or both, only if their charter school's board of directors elect to participate. This section will not apply to charter schools operated by a local board of education.

SECTION 2 would create a new G.S. 135-5.3 to require charter school boards of directors to elect, in writing, whether to join the State Retirement System. This would be an irrevocable election. The boards of directors of charter schools that received State Board of Education approval in 1997 or 1998 must make this election by September 1, 1998. The election would be effective on the date the election is made for current employees. For employees hired after that date, it would be effective on their date of entry into eligible service. The boards of directors of charter schools that receive State Board of Education approval after 1998 must make the election within 30 days after the State Board of Education and the charter school applicant sign the written charter agreement. This election would be effective for all employees on their date of entry into eligible service. The boards of directors must notify in writing their employees as to whether they elected to join, and the employees must acknowledge in writing that they received this notice. This section will not apply to charter schools operated by a local board of education.

SECTION 3 would amend G.S. 135-4 to allow charter school employees who subsequently return to a public school or State employment to "buy back" years of service for the time they were employed in a charter school whose board of directors did not elect to join the Retirement System. To be eligible for this "buy-back", the employee would be required to have at least five years of creditable service. This section will not apply to charter schools operated by a local board of education.

SECTIONS 4 and 5 would provide that only employees of charter schools whose boards of directors elect to join the State Health Plan are eligible for participation in that Plan. The election, and its applicability, is similar to the election to participate in the Retirement System. These sections will not apply to charter schools operated by a local board of education.

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[1] The IRS has issued a private letter ruling that says the employees of charter schools may participate in the Retirement System without jeopardizing the status of the System as a governmental plan. Last year, the General Assembly enacted legislation (SB 297) directing the System's Board of Trustees, through the AG's Office, to request such a ruling. The legislation made the employees eligible for participation on the first day of the calendar month following the State's receipt of a favorable ruling. However, because the ruling was issued in the middle of the school year and charter schools had entered into other arrangements for the provision of retirement benefits, the AG's Office issued a letter to delay until July 1, 1998, this participation.

SECTION 8 would amend G.S. 20-84 to allow nonprofit corporations that have charters to operate charter schools to pay a one-time fee of $6.00 for each permanent vehicle registration plate for each vehicle they register. Currently, local boards of education may purchase these permanent plates.

SECTIONS 1, 9, 10, 11, 12, 15, 17, 18, and 27 would amend a number of statutes to allow local boards of education to apply for a charter for one or more of its schools. If a local board wishes to obtain a charter, it cannot require its employees to work at that school and cannot assign any student to that school unless the student's parent or guardian requests that assignment. Students who reside in the school system who attend a charter school operated by a local board have the same right to school transportation as students assigned to other schools in that system. If the local board wishes to obtain a charter, it must obtain preliminary approval from either the State Board or the board of trustees of one of UNC's constituent institutions.

SECTION 13 would repeal G.S. 115C-238.29B(d), which allows local boards of education to offer information concerning an application for a charter school. This subsection also requires the State Board, when determining whether to approve an application, to consider this information and the impact of the charter school on the local school administrative unit's ability to provide a sound basic education to its students.

SECTION 14 would repeal G.S. 115C-238.29D(b), which limits the number of charter schools to a total of 100 in the State and to no more than five per year per local school administrative unit.

SECTION 15 would amend G.S. 115C-238.29E to require the State Board to issue a written charter within 30 days following the date it grants final approval for a charter. The charter incorporates the information in the application, as modified during the approval process, and any terms and conditions applicable to all charter schools. Currently, these terms and conditions are not required to be applicable on a uniform basis. **SECTION 15** also would amend G.S. 115C-238.29E(f) to require the State Board to go through rulemaking before any rule, policy, procedure, requirement, standard, term, condition or regulation is applicable to charter schools. These "rules" must apply to all charter schools and must be authorized specifically by the Charter School Act.

SECTION 16 would amend G.S. 115C-238.29F(b) to allow charter schools to charge fees, so long as they are not application or admission fees.

SECTION 19 would amend G.S. 115C-238.29F(d) to require charter schools to administer those tests adopted by the State Board that are used to implement the ABC's Program in other public schools.

SECTION 20 would amend G.S. 115C-238.29F(g)(5) to provide that the charter school must make a good faith effort to attract and enroll students so that the population of the

school reasonably reflects the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located. Under current law, the population of the school must reasonably reflect the general population of the local school administrative unit in which it is located within one year after the school begins operation.

SECTION 21 would amend G.S. 115C-238.29G(c) to provide for a mediation process between charter schools and local boards of education.

SECTION 22 would amend G.S. 115C-238.29H. Currently, the local school administrative unit where a child resides must transfer the per pupil local current expense appropriation to the charter school. Section 22 would define this appropriation to include revenue from all sources of funds, including any supplemental taxes, that go into a county's appropriation to the local school administrative unit's local current expense fund. This section also would require a local school administrative unit to remit the funds at times as agreed upon by the unit and the charter school or on the same timeline as they receive the funds from the county. In most cases, this would be on a monthly basis, but it could be on a quarterly or yearly basis. Section 22 also would allow local school administrative units to request an invoice with the child's name, address, and SIMS identification number in order to determine the number of students for whom this appropriation is to be made. If an invoice is required, the local school administrative unit must use the number of students as the basis for the appropriation to the charter school. Failure to remit these funds in a timely manner could result in the State Board's withholding of funds used to pay the salaries of the superintendent and school finance officer. Section 22 would allow county commissioners to allocate to a charter school funds to be used for capital outlay purposes.

SECTIONS 23 and 24 would amend G.S. 115C-452 and G.S. 115C-457.3 to require proceeds from fines, forfeitures, and penalties to be apportioned to charter schools. Section 7 of Article IX of the North Carolina Constitution states, "All moneys, stocks, bonds, and other property belonging to a county school fund, and 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." The bill would provide that the first 25% of these funds would continue to be apportioned only among local school administrative units. The remainder of the funds would be apportioned among local school administrative units and charter schools. Funds from the Civil Penalty and Forfeiture Fund, which are transferred first to the State School Technology Fund, must be used for school technology, but the charter schools are not required to develop and implement school technology plans.

SECTION 25 (a) would amend G.S. 150B-2(8a) to include any State Board of Education or Department of Public Instruction rule, policy, procedure, requirement, standard, term, condition, or regulation that is authorized under the Charter School Act in the definition of a "rule" for the purpose of the Administrative Procedure Act. **Subsection (b)** adds a new Part 6, Rules Affecting Charter Schools, to the

Administrative Procedure Act. G.S. 150B-21.30 would allow the State Board to use a streamlined procedure for adopting rules specifically authorized by the Charter School Act. The Board may publish the text of any proposed rule as the first step in the rulemaking procedure; a rule may take effect without waiting for submission to the General Assembly; and no fiscal note is required unless the rule affects the expenditures or revenues of a unit of local government. The State Board must indicate on its notice that the rule is authorized specifically by the Charter School Act. G.S. 150B-21.31 would require the State Board to submit to the Rules Review Commission the standard written charter agreement that the Board has approved and issued to charter schools to date. The Commission must review each portion of the charter agreement, and each subsequent modification to that charter agreement, as if it is a rule. The Commission may approve only the portions and modifications that are authorized specifically under the Charter School Act. If they are approved, then they are binding on the charter schools. If they are not approved, then they are void and will apply only if a charter school's board of directors agrees to its applicability.

SECTION 26 would require the State Board of Education, in collaboration with the Charter School Professional Association, to evaluate whether the Uniform Education Reporting System (UERS) is the best way for charter schools to report information or whether there is a mutually functional alternative that could be implemented. The Board must report the results of this evaluation to the Joint Legislative Commission on Governmental Operations by December 1, 1998. This section also would require the State Board to consider the adoption of an alternative reporting system that a majority of charter schools present to the Board if is the functional equivalent of the UERS and if it has been benchmarked.

With the exception of Section 27, the bill would take effect July 1, 1998.

H1739-SMRH-004

HEALTHY START ACADEMY
Thomas Williams, Headmaster

ITBS Score Comparisons
1997/98

Kindergarten

	Vocab.	Reading	Listening	Language	Math	Word Anal	Core Total
Grade Equivalent							
1997	K.0	K.0	K.1	K.0	K.0	K.2	K.1
1998	1.7	1.5	1.4	1.6	1.4	1.3	1.6
Difference	+17	+15Mo	+14Mo	+16Mo	+14Mo	+13Mo	+16Mo
% tile 1998	99	96	99	98	97	90	99
% tile 1997	44	38	37	36	48	59	42
Difference	+55	+58	+62	+62	+49	+31	+57

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1739

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1739-ARB-3

Page 1 of __

Date_____,1998

Comm. Sub. []
Amends Title []
Third Edition

Representative Eddins

moves to amend the bill on page 1, line 11, by deleting the word "AND";

and on page 1, line 13, by rewriting the line to read: "REVIEW, AND TO ALLOW ANNUAL SALES TAX REFUNDS FOR LOCAL SCHOOL ADMINISTRATIVE UNITS.";

and on page 3, line 13, by deleting "G.S. 138-" and substituting "G.S. 135-";

and on page 19, lines 18-25, by rewriting the lines to read:
"(2b) A local school administrative unit.";

and on page 20, line 31, by deleting "January 1, 1999." and substituting "July 1, 1998.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED X FAILED _____ TABLED _____

Hensley #1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3

H. B. No. 1739 DATE 6/23/98

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ~~H1739-PCSRH-003~~

(Rep.) Sen.) Hensley

1 moves to amend the bill on page ~~H~~ 15, line ~~1 through 23~~ 38, through page 16, line 10,

2 ( ) WHICH CHANGES THE TITLE

3 by deleting those lines and renumbering the

4 remaining sections accordingly.

5

6

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SIGNED R. J. Hensley, Jr.

ADOPTED _____ FAILED X TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Hensley Amendment #2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3

H. B. No. 1739 DATE 6/23/98

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ~~H 1739-PCSRH-003~~

Rep.) Hensley

~~Sen.~~)

1 moves to amend the bill on page 10, line ~~35~~ 17

2 ( ) WHICH CHANGES THE TITLE

3 by deleting ~~the~~ line ~~35~~ 17

4 + by renumbering the remaining sections

5

6

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SIGNED R. A. Hensley, Jr.

ADOPTED _____ FAILED X TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Hensley Amendment #2

ROLL CALL VOTE

14 YES 18 NO = _____(TOTAL)

HB# 1739
SB# _____

HOUSE STANDING COMMITTEE ON _____

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
	✓	ALLRED	✓		HIGHTOWER
		ARNOLD	✓		JARRELL
✓		BADDOUR	✓		LUEBKE
✓		BEALL		✓	MCCOMAS
		BERRY			MCCOMBS
		BOYD-MCINTYRE		✓	MCMAHAN
	✓	BROWN			MERCER
	✓	BUCHANAN	✓		MILLER
	✓	CAPPS		✓	MINER
	✓	CARPENTER			MORGAN
✓		COLE		✓	MORRIS
		CRAWFORD		✓	NEELY
		CUNNINGHAM	✓		NESBITT
		DECKER			NICHOLS
✓		DEDMON			RAMSEY
	✓	EDDINS		✓	RAYFIELD
		FITCH		✓	RUSSELL
		GAMBLE		✓	STARNES
		GOODWIN			TALLENT
✓		HACKNEY	✓		WOMBLE
✓		HENSLEY			WRIGHT
✓		HILL			
		HOWARD			
✓		~~HUNTER~~ Bryant			

___	___	**CHAIRMEN**		
___	___	GRAY	___	___
___	✓	BRAWLEY	___	___
___	✓	DICKSON	___	___
___	✓	WILSON, C.	___	___
___	___		___	___
___	___		Ex officio Members	
___	___		___	___ Speaker Pro TemWOOD
___	___		___	✓ Majority LeaderDAUGHTRY
___	___		___	___ Majority Whip

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Henely Amendment #3

(Please type or use ballpoint pen)

EDITION No. 3

H. B. No. 1739 DATE 6/23/17

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ~~H1739-PCSRH-003~~

Rep.) Henley

~~Sen.~~)

moves to amend the bill on page ~~12~~ 15, line ~~36-40~~ 35-37

( ) WHICH CHANGES THE TITLE

by deleting these lines

+ on page 15, line 34, by inserting a quotation mark at the end of that line.

SIGNED _____

ADOPTED _____ FAILED X TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Hensley Amendment #3

ROLL CALL VOTE

14 YES 20 NO = _____(TOTAL)

HB# 1739
SB# ____

HOUSE STANDING COMMITTEE ON _____

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
___	✓	ALLRED	✓	___	HIGHTOWER
___	___	ARNOLD	✓	___	JARRELL
✓	___	BADDOUR	✓	___	LUEBKE
✓	___	BEALL	___	✓	MCCOMAS
___	___	BERRY	___	✓	MCCOMBS
___	___	BOYD-MCINTYRE	___	✓	MCMAHAN
___	✓	BROWN	✓	___	MERCER
___	✓	BUCHANAN	✓	___	MILLER
___	✓	CAPPS	___	✓	MINER
___	✓	CARPENTER	___	___	MORGAN
✓	___	COLE	___	✓	MORRIS
___	___	CRAWFORD	___	✓	NEELY
___	___	CUNNINGHAM	✓	___	NESBITT
___	___	DECKER	___	___	NICHOLS
✓	___	DEDMON	___	___	RAMSEY
___	✓	EDDINS	___	✓	RAYFIELD
___	___	FITCH	___	✓	RUSSELL
___	___	GAMBLE	___	✓	STARNES
___	___	GOODWIN	___	___	TALLENT
✓	___	HACKNEY	✓	___	WOMBLE
✓	___	HENSLEY	___	___	WRIGHT
___	✓	HILL	___	___	
___	___	HOWARD	___	___	
✓	___	~~HUNTER~~ Bryant	___	___	

___	___	**CHAIRMEN**		
___	___	GRAY	___	___
___	✓	BRAWLEY	___	___
___	✓	DICKSON	___	___
___	✓	WILSON, C.	___	___
___	___		___	___
___	___		Ex officio Members	
___	___		___	___ Speaker Pro TemWOOD
___	___		___	✓ Majority LeaderDAUGHTRY
___	___		___	___ Majority Whip

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

Nesbitt #1

(Please type or use ballpoint pen)

EDITION No. Third

H. B. No. 1739 DATE

S. B. No. Amendment No. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE

Rep.) Nesbitt
Sen.)

moves to amend the bill on page 13; line 9 - 35

( ) WHICH CHANGES THE TITLE

by deleting those lines;
and by renumbering the remaining sections accordingly;
and on page 20, line 30
by rewriting the line to read
"Section 27. This act becomes effective July 1, 1998. Section 26 of this"

SIGNED Nesbitt

ADOPTED FAILED X TABLED

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Nesbitt Amendment #1

ROLL CALL VOTE

15 YES 18 NO = _____(TOTAL)

HB# 1239
SB# _____

HOUSE STANDING COMMITTEE ON _____

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
	✓	ALLRED	✓		HIGHTOWER
		ARNOLD	✓		JARRELL
✓		BADDOUR	✓		LUEBKE
✓		BEALL			MCCOMAS
		BERRY		✓	MCCOMBS
		BOYD-MCINTYRE		✓	MCMAHAN
	✓	BROWN			MERCER
	✓	BUCHANAN	✓		MILLER
	✓	CAPPS			MINER
	✓	CARPENTER		~~✓~~	~~MORGAN~~
✓		COLE		✓	MORRIS
		CRAWFORD		✓	NEELY
		CUNNINGHAM	✓		NESBITT
		DECKER			NICHOLS
✓		DEDMON			RAMSEY
	✓	EDDINS		✓	RAYFIELD
		FITCH		✓	RUSSELL
		GAMBLE		✓	STARNES
		GOODWIN			TALLENT
✓		HACKNEY	✓		WOMBLE
✓		HENSLEY	✓		WRIGHT
✓		HILL			
		HOWARD			
✓		~~HUNTER~~ Bryant			

___	___	**CHAIRMEN**		
___	✓	GRAY	___	___
___	✓	BRAWLEY	___	___
___	✓	DICKSON	___	___
___	✓	WILSON, C.	___	___
___	___		___	___
___	___		Ex officio Members	
___	___		___	___ Speaker Pro TemWOOD
___	___		___	✓ Majority LeaderDAUGHTRY
___	___		___	___ Majority Whip

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Lucy Lee Wilson Nesbitt #2

(Please type or use ballpoint pen)

H. B. No. 1739 DATE

S. B. No. Amendment No. (to be filled in by Principal Clerk)

Rep.) Nesbitt
Sen.)

moves to amend the bill on page 1, lines 2-6,

by rewriting the title to read

" AN ACT TO GIVE CHARTER SCHOOLS THE SAME MOTOR FUEL TAX ";

and on page 3, lines 8-20, by rewriting the lines to read " If these chartered schools are public school employees and are "teachers" for purposes of membership in the North Carolina Teachers' and State Employees' Retirement System and State Employees' Comprehensive Major Medical Plan. In no event shall anything contained in this Part ";

and on p. 3, line 24, through page 4, line 5, line 41, ~~by deleting those lines,~~ ~~and on page 5, lines 6-41,~~ by deleting the lines; &

& by renumbering the remaining sections

SIGNED

ADOPTED FAILED X TABLED

Nesbitt

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Bill Vote

ROLL CALL VOTE

24 YES 12 NO = _____(TOTAL)

HB# 1739
SB# ____

HOUSE STANDING COMMITTEE ON _____

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
✓		ALLRED		✓	HIGHTOWER
✓		ARNOLD		✓	JARRELL
	✓	BADDOUR		✓	LUEBKE
	✓	BEALL	✓		MCCOMAS
		BERRY	✓		MCCOMBS
		BOYD-MCINTYRE	✓		MCMAHAN
✓		BROWN			MERCER
✓		BUCHANAN		✓	MILLER
✓		CAPPS	✓		MINER
✓		CARPENTER			MORGAN
✓		COLE	✓		MORRIS
		CRAWFORD	✓		NEELY
		CUNNINGHAM		✓	NESBITT
		DECKER			NICHOLS
	✓	DEDMON			RAMSEY
✓		EDDINS	✓		RAYFIELD
		FITCH	✓		RUSSELL
		GAMBLE	✓		STARNES
		GOODWIN			TALLENT
	✓	HACKNEY	✓		WOMBLE
	✓	HENSLEY		✓	WRIGHT
✓		HILL			
		HOWARD			
	✓	~~HUNTER~~ Bryant			

___	___	**CHAIRMEN**		
✓	___	GRAY	___	___
✓	___	BRAWLEY	___	___
✓	___	DICKSON	___	___
✓	___	WILSON, C.	___	___
___	___		___	___
___	___		Ex officio Members	
___	___		___	___ Speaker Pro TemWOOD
___	___		✓	___ Majority LeaderDAUGHTRY
___	___		___	___ Majority Whip

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1739*
Committee Substitute Favorable 6/24/98
Committee Substitute #2 Favorable 7/2/98
Proposed Committee Substitute H1739-PCS9015

Short Title: Retirement/Charter Schs. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO ALLOW CHARTER SCHOOLS TO ELECT TO PARTICIPATE IN THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, IN THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN, OR BOTH, TO GIVE CHARTER SCHOOLS THE SAME MOTOR FUEL TAX EXEMPTION AS PUBLIC SCHOOLS, TO ALLOW CHARTER SCHOOLS TO OBTAIN THE SAME PERMANENT LICENSE PLATES AS PUBLIC SCHOOLS, TO MAKE CHANGES IN THE CHARTER SCHOOL LAW, TO PERMIT A LOCAL BOARD OF EDUCATION TO APPLY FOR CHARTER STATUS FOR ONE OR MORE OF ITS PUBLIC SCHOOLS, TO REQUIRE RULES GOVERNING CHARTER SCHOOLS TO BE SUBJECT TO REVIEW, AND TO ALLOW ANNUAL SALES TAX REFUNDS FOR LOCAL SCHOOL ADMINISTRATIVE UNITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-238.29F(e) reads as rewritten:

"(e) Employees. --

(1) An employee of a charter school <u>operated by a private nonprofit corporation</u> is not an employee of the local school administrative unit in which the charter school is located. <u>An employee of a charter school operated by a local school administrative unit is an</u>

employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.

(2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.

(3) If a teacher employed by a local school administrative unit makes a written request for an extended leave of absence to teach at a charter ~~school,~~ school operated by a private nonprofit corporation, the local school administrative unit shall grant the leave. The local school administrative unit shall grant a leave for any number of years requested by the teacher, shall extend the leave for any number of years requested by the teacher, and shall extend the leave at the teacher's request. For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave or extension of leave be made up to 45 days before the teacher would otherwise have to report for duty. For subsequent years, the local school administrative unit may require that the request for a leave or extension of leave be made up to 90 days before the teacher would otherwise have to report for duty. A teacher who has career status under G.S. 115C-325 prior to receiving an extended leave of absence to teach at a charter school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

(4) The employees of the charter school operated by a private nonprofit corporation shall be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the Teachers' and

State Employees' Comprehensive Major Medical Plan. The State Board of Education provides funds to charter ~~schools,~~ schools operated by private nonprofit corporations, approves the original members of the boards of directors of the charter schools, has the authority to grant, supervise, and revoke charters, and demands full accountability from charter schools for school finances and student performance. Accordingly, it is the determination of the General Assembly that charter schools operated by private nonprofit corporations are public schools and that the employees of these charter schools are public school ~~employees and are "teachers" for purposes of membership in the North Carolina Teachers' and State Employees' Retirement System and State Employees' Comprehensive Major Medical Plan.~~ employees. Employees of a charter school operated by a private nonprofit corporation whose board of directors elects to join under G.S. 135-5.3 are 'teachers' for the purpose of membership in the North Carolina Teachers' and State Employees' Retirement System. Employees of a charter school operated by a private nonprofit corporation whose board of directors elects to join under G.S. 135-40.3A are 'teachers' for the purpose of membership in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System."

Section 2. Article 1 of Chapter 135 of the General Statutes is amended by adding the following new section:

"**§ 135-5.3. Optional participation for charter schools operated by private nonprofit corporations.**

(a) The board of directors of each charter school operated by a private nonprofit corporation shall elect whether to join the Retirement System in accordance with the laws applicable to that System. This election shall be in writing, shall be made no later than September 1, 1998, and shall be filed with the Retirement System and with the State Board of Education. For each charter school employee who is employed on or before the date the board makes the election, this election is effective as of the date the board makes the election. For each charter school employee who is employed after the date the board makes the election, the election is effective as of the date of that employee's entry into eligible service. This subsection applies only to charter schools that received State Board of Education approval under G.S. 115C-238.29D in 1997 or 1998.

(b) No later than 30 days after both parties have signed the written charter under G.S. 115C-238.29E, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to join the Retirement System in accordance with the laws applicable to that System. This election shall be in writing

and filed with the Retirement System and with the State Board of Education and is effective for each charter school employee as of the date of that employee's entry into eligible service. This subsection applies to charter schools that receive State Board of Education approval under G.S. 115C-238.29D after 1998.

(c) A board's election to join the Retirement System under this section is irrevocable and shall require all employees of the charter school to participate.

(d) No retirement benefit, death benefit, or other benefit under the Retirement System shall be paid by the State of North Carolina or the Board of Trustees of the Teachers' and State Employees' Retirement System with respect to any employee of a charter school whose board of directors does not elect to join the Retirement System under this section or with respect to any beneficiary of that employee.

(e) The board of directors of each charter school shall notify each of its employees as to whether the board elected to join the Retirement System under this section. This notification shall be in writing and shall be provided within 30 days of the board's election or at the time an initial offer for employment is made, whichever occurs last. If the board did not elect to join the Retirement System, the notice shall include a statement that the employee shall have no legal recourse against the board or the State for any possible credit or reimbursement under the Retirement System. The employee shall provide written acknowledgment of the employee's receipt of the notification under this subsection."

Section 3. G.S. 135-4 is amended by adding the following new subsection to read:

"(bb) Credit for Employment in Charter School Operated by a Private Nonprofit Corporation. -- Any member may purchase creditable service for any employment as an employee of a charter school operated by a private nonprofit corporation whose board of directors did not elect to participate in the Retirement System under G.S. 135-5.3 upon completion of five years of membership service after that charter school employment by making a lump-sum payment into the Annuity Savings Fund. The payment by the member shall be equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities, taking into account the additional retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire with an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms 'full cost', 'full liability', and 'full actuarial cost' include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance."

Section 4. G.S. 135-40.1(6) reads as rewritten:

"(6) Employing Unit. -- A North Carolina School System; Community College; State Department, Agency or Institution; Administrative Office of the Courts; or Association or Examining Board whose

employees are eligible for membership in a State-Supported Retirement System. An employing unit also shall mean a charter school operated by a private nonprofit corporation in accordance with Part 6A of Chapter 115C of the General Statutes ~~whose employees are deemed to be public employees and members of a State-Supported Retirement System.~~ whose board of directors elects to join the Plan under G.S. 135-40.3A."

Section 5. Part 3 of Article 3 of Chapter 135 is amended by adding the following new section:

"**§ 135-40.3A. Optional participation for charter schools operated by private nonprofit corporations.**

(a) The board of directors of each charter school operated by a private nonprofit corporation shall elect whether to join the Plan in accordance with the laws applicable to that Plan. This election shall be in writing, shall be made no later than September 1, 1998, and shall be filed with the Executive Administrator and Board of Trustees and with the State Board of Education. For each charter school employee who is employed on or before the date the board makes the election, this election is effective as of the date the board makes the election. For each charter school employee who is employed after the date the board makes the election, the election is effective as of the date of that employee's entry into eligible service. This subsection applies only to charter schools that received State Board of Education approval under G.S. 115C-238.29D in 1997 or 1998.

(b) No later than 30 days after both parties have signed the written charter under G.S. 115C-238.29E, the board of directors of a charter school operated by a private nonprofit corporation shall elect whether to join the Plan in accordance with the laws applicable to that Plan. This election shall be in writing and filed with the Executive Administrator, the Board of Trustees, and the State Board of Education. This election is effective for each charter school employee as of the date of that employee's entry into eligible service. This subsection applies to charter schools that receive State Board of Education approval under G.S. 115C-238.29D after 1998.

(c) A board's election to join the Plan under this section is irrevocable and shall require all employees of the charter school to participate.

(d) If a charter school's board of directors does not elect to join the Plan under this section, that school's employees and the dependents of those employees are not eligible for any benefits under the Plan.

(e) The board of directors of each charter school shall notify each of its employees as to whether the board elected to join the Plan under this section. This notification shall be in writing and shall be provided within 30 days of the board's election or at the time an initial offer for employment is made, whichever occurs last. If the board did not elect to join the Plan, the notice shall include a statement that the employee shall have no legal recourse against the board or the State for any possible benefit under the Plan. The employee shall provide written acknowledgment of the employee's receipt of the notification under this subsection."

Section 6. G.S. 105-228.90(b) reads as rewritten:

"(b) Definitions. -- The following definitions apply in this Article:

(1) Reserved.

(2) Charter school board. -- A nonprofit corporation that has a charter under G.S. 115D-238.29D to operate a charter school.

~~(1)~~(3) City. -- A city as defined by G.S. 160A-1(2). The term also includes an urban service district defined by the governing board of a consolidated city-county, as defined by G.S. 160B-2(1).

~~(1a)~~(4) Code. -- The Internal Revenue Code as enacted as of January 1, 1997, including any provisions enacted as of that date which become effective either before or after that date.

~~(1b)~~(5) County. -- Any one of the counties listed in G.S. 153A-10. The term also includes a consolidated city-county as defined by G.S. 160B-2(1).

~~(2)~~(6) Reserved.

~~(3)~~(7) Electronic Funds Transfer. -- A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

~~(4)~~(8) Reserved.

~~(5)~~(9) Person. -- An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes.

~~(6)~~(10) Secretary. -- The Secretary of Revenue.

~~(7)~~(11) Tax. -- A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms "tax" and "additional tax" include penalties and interest as well as the principal amount.

~~(8)~~(12) Taxpayer. -- A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes."

Section 7. G.S. 105-449.88 reads as rewritten:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state.

(2) Motor fuel sold to the federal government.
(3) Motor fuel sold to the State for its use.
(4) Motor fuel sold to a local board of education for use in the public school system.
(5) Motor fuel sold to a charter school board for use for charter school purposes."

Section 8. G.S. 20-84 reads as rewritten:

"§ 20-84. Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by the local chapters of American National Red Cross.

The Division upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the State or any department thereof, or by any county, township, city or town, or by any board of education, or by any nonprofit corporation that has a charter under G.S. 115C-238.29D to operate a charter school, or by any orphanage or civil air patrol, or incorporated emergency rescue squad, or incorporated REACT ("Radio Emergency Association of Citizen Teams") Team, or for any motor vehicle involved exclusively in the support of a disaster relief effort, shall collect six dollars ($6.00) for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church-owned bus used exclusively for transporting children and parents to Sunday school and church services and for no other purpose.

In lieu of the annual six dollars ($6.00) registration provided for in this section, the Division may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles. The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Division shall collect a fee of six dollars ($6.00) for each vehicle so registered and licensed.

The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.

The Division of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of six dollars ($6.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State

for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to replacement vehicles to be used for the purposes above described and for which the plates were originally issued.

The Division of Motor Vehicles shall issue to the American National Red Cross, upon application of any local chapter thereof and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate, which need not be thereafter renewed, for all disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used for emergency or disaster work, and operated by a local chapter in this State in the business of the American National Red Cross. Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used for the purposes above described and for which the plates were originally issued. In the event of transfer of ownership to any other person, firm or corporation, or transfer or reassignment of any vehicle bearing such registration plate to any chapter or association of the American National Red Cross in any other state, territory or country, the registration plate assigned to such vehicle shall be surrendered to the Division of Motor Vehicles.

In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of six dollars ($6.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to him pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy thereof shall be furnished to the registration division of the Division. Information as to the individual assignments of such registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that such reassignment shall be made to appear upon the index required herein within 20 days after such reassignment.

The Division of Motor Vehicles shall, upon appropriate certification of financial responsibility, issue to sheltered workshops recognized or approved by the Division of Vocational Rehabilitation Services and to public and nonprofit agencies or organizations which provide transportation for or operate programs subject to and approved in accordance with standards adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services upon application and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate for vehicles registered to and operated by such agencies. The initial six dollars ($6.00) fee required by this section

and for this purpose shall be in full payment of the permanent registration plate issued for such vehicle operated by a sheltered workshop and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used by the sheltered workshop designated on the registration card.

On and after January 1, 1972, permanent registration plates used on all vehicles owned by the State of North Carolina or a department thereof shall be of a distinctive color and design which shall be readily distinguishable from all other permanent registration plates issued pursuant to this section or G.S. 20-84.1. For the purpose of carrying out the intent of this paragraph, all vehicles owned by the State of North Carolina or a department thereof in operation as of October 1, 1971, and bearing a permanent registration shall be reregistered during the months of October, November and December, 1971, and upon reregistration, registration plates issued for such vehicles shall be of a distinctive color and design as provided for hereinabove."

Section 9. G.S. 115C-238.29B(a) reads as rewritten:

"(a) Any person, group of persons, ~~or~~ nonprofit ~~corporation~~ corporation, or local board of education seeking to establish a charter school may apply to establish a charter school. If ~~the~~ an applicant other than a local board of education seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion. If a local board of education seeks a charter for a school, the application shall include a statement that the local board understands that no employee shall be required to work at the charter school and no student shall be assigned to the school except at the request of the student's parent or guardian."

Section 10. G.S. 115C-238.29B(b)(3) reads as rewritten:

"(3) The governance structure of the ~~school~~ school, if the applicant is not a local board of education, including the names of the proposed initial members of the board of directors of the nonprofit, tax-exempt corporation and the process to be followed by the school to ensure parental involvement."

Section 11. G.S. 115C-238.29B(b)(11) reads as rewritten:

"(11) The procedures by which students can be excluded from the charter school and returned to a public ~~school.~~ school other than a charter school. Notwithstanding any law to the contrary, any local board may refuse to admit any student who is suspended or expelled from a charter school due to actions that would lead to suspension or expulsion from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired."

Section 12. G.S. 115C-238.29B(c) reads as rewritten:

"(c) An applicant shall submit the application to a chartering entity for preliminary approval. A chartering entity may be:

(1) The local board of education of the local school administrative unit in which the charter school will be ~~located;~~ located, unless the applicant is a local board of education;

(2) The board of trustees of a constituent institution of The University of North Carolina, so long as the constituent institution is involved in the planning, operation, or evaluation of the charter school; or

(3) The State Board of Education.

Regardless of which chartering entity receives the application for preliminary approval, the State Board of Education shall have final approval of the charter school.

Notwithstanding the provisions of this subsection, if the State Board of Education finds that an applicant (i) submitted an application to a local board of education and received final approval from the State Board of Education, but (ii) is unable to find a suitable location within that local school administrative unit to operate, the State Board of Education may authorize the charter school to operate within an adjacent local school administrative unit for one year only. The charter school cannot operate for more than one year unless it reapplies, in accordance with subdivision (1), (2), or (3) of this subsection, and receives final approval from the State Board of Education."

Section 13. G.S. 115C-238.29B(d) is repealed.

Section 14. G.S. 115C-238.29D(b) is repealed.

Section 15. G.S. 115C-238.29E reads as rewritten:

"**§ 115C-238.29E. Charter school operation.**

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is located. It shall be accountable to the local board of education if the applicant for the charter is the local board of education or if it applied for and received preliminary approval from that local board for purposes of ensuring compliance with applicable laws and the provisions of its charter. All other charter schools shall be accountable to the State Board for ensuring compliance with applicable laws and the provisions of their charters, except that any of these charter schools may agree to be accountable to the local board of the school administrative unit in which the charter school is located rather than to the State Board.

(b) A charter school other than a charter school for which the applicant is a local board of education shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the application. A charter school for which the applicant is a local board of education shall be operated by the local board of education.

(c) ~~A charter school shall operate under the written charter signed by the entity to which it is accountable under subsection (a) of this section and the applicant. A charter school is not required to enter into any other contract. The charter shall incorporate the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the State Board of Education. No other terms may be imposed on the charter school as a condition for receipt of local funds.~~ The State Board shall issue

the written charter no later than 30 days after the date on which the State Board grants final approval for the charter. The written charter shall incorporate the information provided in the application, as modified during the charter approval process, and any terms and conditions applicable to all charter schools under the rules of the State Board. The charter school is not required to agree to any additional terms, whether requested by the State Board, the local board where the charter school is located, or the entity to which the charter school is accountable. No additional terms may be imposed on the charter school as a condition for receipt of local funds. The charter school shall operate under the written charter signed by the entity to which it is accountable and the applicant.

(d) The board of directors of the charter school operated by a private nonprofit corporation shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures. The local board of education shall decide these matters for a charter school operated by a local board.

(e) ~~A charter school's specific location~~ The specific location of a charter school operated by a private nonprofit corporation shall not be prescribed or limited by a local board or other authority except a zoning authority. The school may lease space from a local board of education or as is otherwise lawful in the local school administrative unit in which the charter school is located. If a charter school leases space from a sectarian organization, the charter school classes and students shall be physically separated from any parochial students, and there shall be no religious artifacts, symbols, iconography, or materials on display in the charter school's entrance, classrooms, or hallways. Furthermore, if a charter school leases space from a sectarian organization, the charter school shall not use the name of that organization in the name of the charter school.

At the request of the charter school, the local board of education of the local school administrative unit in which the charter school will be located shall lease or may sell any available building or land to the charter school unless the board demonstrates that the lease or sale is not economically or practically feasible or that the local board does not have adequate classroom space to meet its enrollment needs. Notwithstanding any other law, a local board of education may provide a school facility to a charter school free of charge; however, the charter school is responsible for the maintenance of and insurance for the school facility.

(f) Except as provided in this Part and pursuant to the provisions of its charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit. The State Board shall not adopt any rules, policies, procedures, requirements, standards, terms, conditions, or regulations governing charter schools unless they are authorized specifically under this Part; they are applicable uniformly to all charter schools; and the Board proceeds under Chapter 150B of the General Statutes. Only those rules, policies, procedures, requirements, standards, terms, conditions, and regulations that are adopted by the Board shall apply to charter schools and may be included in the written charter and amendments to that charter. The Board may adopt guidelines to assist charter

schools. These guidelines are not binding on charter schools and shall not be included in any written charter unless the charter school agrees to the inclusion."

Section 16. G.S. 115C-238.29F(b) reads as rewritten:

"(b) School Nonsectarian. -- A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge ~~tuition or~~ tuition, application fees, or admission fees. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution."

Section 17. G.S. 115C-238.29F(c) is amended by adding the following new subdivision:

"(3) The civil liability for a charter school operated by a local school administrative unit shall be the same as for any other school operated by the unit."

Section 18. G.S. 115C-238.29F(h) reads as rewritten:

"(h) Transportation. -- The charter school may provide transportation for students enrolled at the school. The charter school shall develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located. The charter school is not required to provide transportation to any student who lives within one and one-half miles of the school. At the request of the charter school and if the local board of the local school administrative unit in which the charter school is located operates a school bus system, then that local board may contract with the charter school to provide transportation in accordance with the charter school's transportation plan to students who reside in the local school administrative unit and who reside at least one and one-half miles of the charter school. A local board may charge the charter school a reasonable charge that is sufficient to cover the cost of providing this transportation. Furthermore, a local board may refuse to provide transportation under this subsection if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible to provide this transportation.

A student who attends a charter school operated by a local board of education and who resides within the local school administrative unit in which the school is located has the same right to school transportation as students assigned to other public schools in the local school administrative unit."

Section 19. G.S. 115C-238.29F(d) reads as rewritten:

"(d) Instructional Program. --

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the charter.

(3) A charter school shall ~~conduct the student assessments required for charter schools by the State Board of Education.~~ administer the tests adopted by the State Board of Education under G.S. 115C-

174.11 and that are used to implement the School-Based Management and Accountability Program in other public schools.

(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with special needs.

(5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General Statutes, except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its charter."

Section 20. G.S. 115C-238.29F(g)(5) reads as rewritten:

"(5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the charter, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. The charter school may give enrollment priority to siblings of currently enrolled students who were admitted to the charter school in a previous year and to children of the school's principal, teachers, and teacher assistants. In addition, and only for its first year of operation, the charter school may give enrollment priority to children of the initial members of the charter school's board of directors, so long as (i) these children are limited to no more than ten percent (10%) of the school's total enrollment or to 20 students, whichever is less, and (ii) the charter school is not a former public or private school. ~~Within one year after the charter school begins operation,~~ The charter school shall make a good faith effort to attract and enroll students so that the population of the school ~~shall~~ reasonably ~~reflect~~ reflects the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit."

Section 21. G.S. 115C-238.29G(c) reads as rewritten:

"(c) The State Board and the charter school are encouraged to make a good-faith attempt to resolve the differences that may arise between them. ~~They~~ Furthermore, the local board of the local school administrative unit in which the charter school is located and the charter school are encouraged to make a good-faith attempt to resolve any differences that may arise between them. The parties in dispute may agree to jointly select a mediator. The mediator shall act as a neutral facilitator of

disclosures of factual information, statements of positions and contentions, and efforts to negotiate an agreement settling the differences. The mediator shall, at the request of either ~~the State Board or a charter school,~~ party, commence a mediation immediately or within a reasonable period of time. The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A of the General Statutes governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement.

Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation proceedings shall be conducted in private. Evidence of statements made and conduct occurring in a mediation are not subject to discovery and are inadmissible in any court action. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. The mediator shall not be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation in any civil proceeding for any purpose, except disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators. The mediator may determine that an impasse exists and discontinue the mediation at any time. The mediator shall not make any recommendations or public statement of findings or conclusions. The ~~State Board and the charter school~~ parties in dispute shall share equally the mediator's compensation and expenses. The mediator's compensation shall be determined according to rules adopted under Chapter 7A of the General Statutes."

Section 22. G.S. 115C-238.29H reads as rewritten:

"**§ 115C-238.29H. State and local funds for a charter school.**

(a) The State Board of Education shall allocate to each charter school (i) an amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school except for the allocation for children with special needs and (ii) an additional amount for each child attending the charter school who is a child with special needs. In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual adjustments to the amount allocated to a charter school based on its enrollment growth in school years subsequent to the initial year of operation.

In the event a child with special needs leaves the charter school and enrolls in a public school during the first 60 school days in the school year, the charter school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with special needs enrolls in a charter school during the first 60 school days in the school year, the State Board shall allocate to the charter school the pro rata amount of additional funds for children with special needs.

(a1) Funds allocated by the State Board of Education may be used to enter into operational and financing leases for real property or mobile classroom units for use as school facilities for charter schools and may be used for payments on loans made to charter schools for facilities or equipment. However, State funds shall not be used to

obtain any other interest in real property or mobile classroom units. No indebtedness of any kind incurred or created by the charter school shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the State or its political ~~subdivisions.~~ subdivisions, unless the charter school is operated by a local board of education. Every contract or lease into which a charter school enters except for contracts or leases entered into by a local board of education shall include the previous sentence. The school also may own land and buildings it obtains through non-State sources.

(b) If a student attends a charter school, the local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year. The per pupil local current expense appropriation shall be calculated by dividing the total county appropriation to the local school administrative unit's local current expense fund, including appropriations funded by supplemental taxes, by the unit's average daily membership for the budget year as determined by and certified to the unit and the board of county commissioners by the State Board. In order to establish the number of children for whom these funds are to be transferred, the local administrative unit may require the charter school to provide electronically an invoice that identifies each child for whom these funds are to be remitted, that child's address, and that child's Student Information Management System identification number. The local school administrative unit shall not require any other information from the charter school as a condition of the unit's remission of these funds. If the local school administrative unit requires this invoice, the unit shall provide to the charter school the local current expense appropriation based on the number of children in the most recent invoice. If no invoice is required, the local current expense appropriation shall be based on the number of children as mutually agreed upon by the local school administrative unit and the charter school. The local school administrative unit shall remit these funds to the charter school at times that are mutually agreed upon by the unit and the charter school, but if no agreement is reached, then the unit shall remit these funds to the charter school no later than one week after the unit receives the funds from the board of county commissioners as established under G.S. 115C-437 and upon receipt of an invoice, if required. The State Board may withhold money used for payment of salaries for the superintendent and school finance officer of any local school administrative unit if the Board finds that the unit is not using its best efforts to remit these funds on a timely basis.

(c) The board of county commissioners of the county in which the charter school is located may allocate to the charter school funds that may be used for capital outlay purposes."

Section 23. G.S. 115C-452 reads as rewritten:

"**§ 115C-452. Fines and forfeitures.**

The clear proceeds of all penalties and forfeitures and of all fines collected in the General Court of Justice in each county shall be remitted by the clerk of the superior court to the county finance officer, who shall forthwith determine what portion of the

total is due to each local school administrative unit and to each charter school in the county and remit the appropriate portion of the amount to the finance officer of each local school administrative ~~unit.~~ unit and each charter school. ~~Fines~~ The first twenty-five percent (25%) of 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. The remainder of the fines and forfeitures shall be apportioned according to the projected average daily membership of each local school administrative unit and each charter school as determined by and certified to the local school administrative units, the charter schools, and the board of county commissioners by the State Board of Education pursuant to G.S. 115C-430 or G.S. 115C-238.29H(b)."

Section 24. G.S. 115C-457.3 reads as rewritten:

"**§ 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~~ The first twenty-five percent (25%) of these funds shall be allocated to local school administrative units on the basis of average daily membership. The remaining funds shall be allocated to local school administrative units and charter schools on the basis of average daily membership. Notwithstanding any other law, the funds allocated to charter schools under this section shall be used for school technology; however, in accordance with G.S. 115C-238.29E(f), the charter school is not required to develop or submit a school technology plan under Part 3A of Article 8 of this Chapter."

Section 25. (a) G.S. 150B-2(8a) reads as rewritten:

"(8a) 'Rule' means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term also includes any State Board of Education or Department of Public Instruction rule, policy, procedure, requirement, standard, term, condition, or regulation that is authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes. The term does not include the following:

a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.

b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as

defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.

c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

e. Statements of agency policy made in the context of another proceeding, including:

1. Declaratory rulings under G.S. 150B-4.

2. Orders of establishing or fixing rates or tariffs.

f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.

g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.

h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.

j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.1 and the variable component of the excise tax on motor fuel under G.S. 105-449.80."

(b) Article 2A of Chapter 150B of the General Statutes is amended by adding the following new Part:

"Part 6. Rules Affecting Charter Schools.

"**§ 150B-21.30. Procedures applicable to rules affecting charter schools.**

(a) G.S. 150B-21.2(a)(1) shall not apply to proposed rules adopted by the State Board of Education if the proposed rules are authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes.

(b) Notwithstanding G.S. 150B-21.3(b), a permanent rule that is adopted by the State Board of Education, is approved by the Rules Review Commission, and is authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes, becomes effective five business days after the Commission delivers the rule to the Codifier of Rules, unless the rule specifies a later effective date. If the State Board of Education specifies a later effective date, the rule becomes effective upon

that date. A permanent rule that is adopted by the State Board of Education to implement Part 6A of Article 16 of Chapter 115C of the General Statutes, but is not approved by the Rules Review Commission, shall not become effective.

(c) G.S. 150B-21.4(b1) shall not apply to permanent rules the State Board of Education proposes to adopt if those rules are authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes.

(d) The rule proposed by the State Board of Education may create, amend, or repeal a rule. The State Board of Education shall indicate in the notice of proposed text that the rule is authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes and that the State Board of Education is proceeding under that authority.

"**§ 150B-21.31. Procedures applicable to charters.**

The State Board of Education shall submit to the Commission the standard written charter agreement that the State Board of Education approved and issued under Part 6A of Article 16 of Chapter 115C of the General Statutes to charter schools that received State Board approval under G.S. 115C-238.29D in 1997 or 1998. The State Board of Education also shall submit to the Commission any modifications to that written charter agreement that the State Board approves after July 1, 1998, for issuance to charter schools approved in subsequent years. The Commission shall review each portion of the charter and each modification to that charter as if it is a rule and shall follow the procedure established in Part 3 of this Article. The Commission shall determine whether each portion or modification is authorized specifically under Part 6A of Article 16 of Chapter 115C of the General Statutes. The Commission may approve only portions and modifications of the charter that are so authorized. All approved portions and modifications of the charter are binding on the charter school. Each portion or modification of the charter that is not approved is void and shall not apply to any charter school unless the charter school's board of directors agrees to its applicability. The board of directors is not required to agree to any portion or modification of the charter that the Commission does not approve. This section shall not apply to information in a charter school's application, as modified during the approval process, that is incorporated in each charter school's charter agreement."

Section 26. (a) The State Board of Education, in collaboration with the Charter School Professional Association, shall evaluate the Uniform Education Reporting System to determine whether this is the best way for charter schools to report information to the State Board or whether there is a mutually functional alternative that could be implemented. The State Board shall report the results of this evaluation and its recommendations, including any proposed legislative changes, to the Joint Legislative Commission on Governmental Operations by December 1, 1998.

(b) If, at any time, a majority of charter schools present to the State Board of Education an alternative reporting system that is the functional equivalent of the Uniform Education Reporting System and the alternative system has been

benchmarked, the State Board shall consider the adoption of that system for charter schools.

Section 27. G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. -- A governmental entity listed in this subsection is allowed an annual refund of sales and use ~~tax~~ taxes paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(

2b) A local school administrative unit.

(3) A metropolitan sewerage district or a metropolitan water district in this State.

(4) A water and sewer authority created under Chapter 162A of the General Statutes.

(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.

(6) A sanitary district.

(7) A regional solid waste management authority created pursuant to G.S. 153A-421.

(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.

(9) A district health department.

(10) A regional council of governments created pursuant to G.S. 160A-470.

(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.

(12) A regional planning commission created pursuant to G.S. 153A-391.

(13) A regional sports authority created pursuant to G.S. 160A-479.

(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.

(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.

(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.

(16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:

a. It has all of the rights of a municipality.

b. A local act of the General Assembly declares it to be a municipality.

c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.

(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.

(18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.

(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.

(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.

(21) The University of North Carolina Hospitals at Chapel Hill."

Section 28. This act becomes effective July 1, 1998. Section 27 of this act applies to taxes paid on or after July 1, 1998.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1739 A BILL TO BE ENTITLED AN ACT TO ALLOW CHARTER SCHOOLS TO ELECT TO PARTICIPATE IN THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, IN THE NORTH CAROLINA TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN, OR BOTH, TO GIVE CHARTER SCHOOLS THE SAME MOTOR FUEL TAX EXEMPTION AS PUBLIC SCHOOLS, TO ALLOW CHARTER SCHOOLS TO OBTAIN THE SAME PERMANENT LICENSE PLATES AS PUBLIC SCHOOLS, TO MAKE CHANGES IN THE CHARTER SCHOOL LAW, TO PERMIT A LOCAL BOARD OF EDUCTION TO APPLY FOR CHARTER STATUS FOR ONE OR MORE OF ITS PUBLIC SCHOOLS, AND TO REQUIRE RULES GOVERNING CHARTER SCHOOLS TO BE SUBJECT TO REVIEW.

☐ 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 (# 3), ☑ which changes the title, unfavorable as to original bill (Committee Substitute Bill # 2), ~~(and recommendation that the committee substitute bill #) be re-referred to the Committee on .)~~

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

☐

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 475*
Finance Committee Substitute Adopted 6/19/97
House Committee Substitute Favorable 6/4/98

Short Title: Fund for Displaced Homemakers. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA FUND FOR DISPLACED HOMEMAKERS TO BE ADMINISTERED BY THE NORTH CAROLINA COUNCIL FOR WOMEN, AND TO ESTABLISH AN ADDITIONAL CIVIL ACTION FEE TO BE COLLECTED BY THE COURT IN DIVORCE ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. Part 10B of Article 9 of Chapter 143B of the General Statutes is amended by adding the following new section to read:

"**§ 143B-394.10. North Carolina Fund for Displaced Homemakers.**

(a) There is established in the Department of Administration the North Carolina Fund for Displaced Homemakers. The Fund shall be administered by the North Carolina Council for Women in accordance with Article 1 of Chapter 143 of the General Statutes and shall be used to make grants to programs for displaced homemakers. The Council shall make quarterly grants to each eligible program. Grants shall be awarded according to criteria established by the Council. No more than ten percent (10%) of these funds shall be used for administrative costs by the Council. In order to be eligible to receive grant funds under this section, a displaced homemaker program shall fulfill all of the criteria established by the Council. The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from

the Fund, the success of those programs, and the costs associated with administering the Fund.

(b) The Department, upon recommendations by the Council, shall adopt rules to implement the North Carolina Fund for Displaced Homemakers."

Section 2. G.S. 7A-305 is amended by adding the following new subsection to read:

"(a2) In every final action for divorce filed in the district court, a cost of twenty dollars ($20.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer for deposit to the North Carolina Fund for Displaced Homemakers established under G.S. 143B-394.10. Costs assessed under this subsection shall be in addition to any other costs assessed under this section."

Section 3. G.S. 7A-305(c) reads as rewritten:

"(c) The clerk of superior court, at the time of the filing of the papers initiating the action or the appeal, shall collect as advance court costs, the ~~facilities fee and General Court of Justice fee,~~ facilities fee, General Court of Justice fee, and the divorce fee imposed under subsection (a2) of this section, except in suits by an indigent. The clerk shall also collect the fee for discovery procedures under Rule 27(a) and (b) at the time of the filing of the verified petition."

Section 4. This act becomes effective July 1, 1997, and applies to final actions for divorce filed on and after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 475

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S475-ALA-001

Date_____,1998

Comm. Sub. [ ]
Amends Title [ ]
Third Edition

1 moves to amend the bill on page 2, line 20,
2 by deleting the phrase "July 1, 1997" and substituting the phrase
3 "December 1, 1998".
4

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 475*
Finance Committee Substitute Adopted 6/19/97
House Committee Substitute Favorable 6/4/98
Proposed Committee Substitute S475-PCSA883-LA

Short Title: Fund for Displaced Homemakers. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA FUND FOR DISPLACED HOMEMAKERS TO BE ADMINISTERED BY THE NORTH CAROLINA COUNCIL FOR WOMEN, AND TO ESTABLISH AN ADDITIONAL CIVIL ACTION FEE TO BE COLLECTED BY THE COURT IN DIVORCE ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. Part 10B of Article 9 of Chapter 143B of the General Statutes is amended by adding the following new section to read:

"**§ 143B-394.10. North Carolina Fund for Displaced Homemakers.**

(a) There is established in the Department of Administration the North Carolina Fund for Displaced Homemakers. The Fund shall be administered by the North Carolina Council for Women in accordance with Article 1 of Chapter 143 of the General Statutes and shall be used to make grants to programs for displaced homemakers. The Council shall make quarterly grants to each eligible program. Grants shall be awarded according to criteria established by the Council. No more than ten percent (10%) of these funds shall be used for administrative costs by the Council. In order to be eligible to receive grant funds under this section, a displaced homemaker program shall fulfill all of the criteria established by the Council. The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from

the Fund, the success of those programs, and the costs associated with administering the Fund.

(b) The Department, upon recommendations by the Council, shall adopt rules to implement the North Carolina Fund for Displaced Homemakers."

Section 2. G.S. 7A-305 is amended by adding the following new subsection to read:

"(a2) In every final action for divorce filed in the district court, a cost of twenty dollars ($20.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer for deposit to the North Carolina Fund for Displaced Homemakers established under G.S. 143B-394.10. Costs assessed under this subsection shall be in addition to any other costs assessed under this section."

Section 3. G.S. 7A-305(c) reads as rewritten:

"(c) The clerk of superior court, at the time of the filing of the papers initiating the action or the appeal, shall collect as advance court costs, the ~~facilities fee and General Court of Justice fee,~~ facilities fee, General Court of Justice fee, and the divorce fee imposed under subsection (a2) of this section, except in suits by an indigent. The clerk shall also collect the fee for discovery procedures under Rule 27(a) and (b) at the time of the filing of the verified petition."

Section 4. This act becomes effective December 1, 1998, and applies to final actions for divorce filed on and after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 475 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE NORTH CAROLINA FUND FOR DISPLACED HOMEMAKERS TO BE ADMINISTERED BY THE NORTH CAROLINA COUNCIL FOR WOMEN, AND TO ESTABLISH AN ADDITIONAL CIVIL ACTION FEE TO BE COLLECTED BY THE COURT IN DIVORCE ACTIONS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to House committee substitute bill (# 2), ☐ ~~which changes the title~~, unfavorable as to ~~original bill~~ (House Committee Substitute Bill # 1), ~~(and recommendation that the committee substitute bill #) be re-referred to the Committee on)~~

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1289*
Finance Committee Substitute Adopted 6/10/98

Short Title: Clarify Transit Authority Debt. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF REGIONAL TRANSIT AUTHORITIES TO USE INSTALLMENT PURCHASE FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) is amended by adding a new subdivision to read:

"(11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter."

Section 2. G.S. 160A-610 is amended by adding a new subdivision to read:

"(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;"

Section 3. G.S. 160A-639 is amended by adding a new subdivision to read:

"(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;"

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

EXPLANATION OF SENATE BILL 1289:
Clarify Transit Authority Debt (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 6, 1998
SPONSOR: Senator Gulley
Recommendation of the Public Transit Study Committee

Senate Bill 1289 clarifies the authority of regional transit authorities to use installment purchase financing. There are two regional transit authorities: the Research Triangle Regional Public Transportation Authority, created under Article 26 of Chapter 160A of the General Statutes, and the Triad Regional Public Transportation Authority, created under Article 27 of Chapter 160A. The Triangle Regional Public Transportation Authority serves Wake, Durham, and Orange Counties. The creation of the Triad Regional Public Transportation Authority was authorized by the 1997 General Assembly. This Authority serves Forsyth, Guilford, Randolph, Davidson, and Alamance Counties. The four major cities involved in the creation of the Triad Authority are Greensboro, High Point, Winston-Salem, and Burlington.

Under current law, these authorities are authorized to use equipment trust certificates, which are similar to installment purchase contracts. Installment purchase financing is a type of local government debt created when a local unit enters into an installment contract secured by a security interest in the property constructed or renovated. Certificates of participation may be issued as part of the installment purchase financing. A certificate of participation is a document setting out the share of the local unit's debt owed to the holder of the certificate. In practice, the holder receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. Unlike the issuance of general obligation bonds, however, installment purchase financing is not subject to the vote of the people.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1289 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE AUTHORITY OF REGIONAL TRANSIT AUTHORITIES TO USE INSTALLMENT PURCHASE FINANCING.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

AM

VISITOR REGISTRATION SHEET

House Finance — July 8, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jan Cratts	NCASA
Harriet Dial	NCAE
Bill Wilson	NCAE
Linn Bellamy	SBE
John Rustin	NCFBC
Bill Scoggin	NC Bar Assoc
Leanne Weiner	NCSBA
Susan Harrison	NCPSS
Alice Garland	Electricities
Michael Crowell	Atty, Raleigh
Paul Gipson	OSBM
Donna Alderman	NCDOR
Chris Jones	GTE Atlanta GA

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jim Ritchey	TTA
Doug Rogers	NCDOT
Josh Cogdell	PPAB
Doug Hayes	Locke Foundation
John McMillan	Manning, Fulton & Skinner, P.A.
Jim Blackburn	NC Association of County Commissioners
Catherine Gilliss	NCSU
Amy Mahoit	N.C. Ed Law
Katie Dorsett	Dept of Administration
Vernon Robinson	
Rick Taylor	Taylor Law Firm
Katherine Skinner	The Nature Conservancy

VISITOR REGISTRATION SHEET

Horse Pasture

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
Thad Davis	NCAF
Ken Wilkins	NC DOA
Nat Mund	Conservation Council of North Carolina

VISITOR REGISTRATION SHEET

PM

Horse Pasture
Name of Committee

July 8, 1998
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
NIRALI PATEL	GOV.'S OFFICE
Greg Malhoit	NCJCDC
Stephanie Summerson	NCJCDC
Bill Wilson	NCAE
Harriet Dial	NCAE
Tim Bryan	TREASURER
Jack Pruett	"
Ann Belcher	SBE
[illegible]	Public School Forum of NC
Keshi Belcher	NCCBI
Jim Blackburn	NC Association of County Commissioners
MICHAEL CROWELL	ATTY, RALEIGH

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Winner	NCSBA
Jan Curtis	JCPSS
Chris Fitzsimon	Common Sense Foundation
Piper Nichols	SBE
Doug Ryan	NCDOT
Karen Stark	Gov.'s Office
Lynda McCullough	" "
Susan Harrison	WCPSS
Liz Morey	Healthy Start Academy
Renee Yi Hovington	Healthy Start Academy
Elaine Justice	Healthy start Academy
Laaree H. Adelen	The Sanford School

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Sandra Hoag	Arapahoe Charter School
Jennie Adams	Arapahoe Charter School
Tanya Purchell	Arapahoe Charter School
MARY WRIGHT	OMUTEKO GWAMAZIIMA
Vanessa L. Spence	Healthy Start Academy
Gwendolyn Morman	Healthy Start "
Maureen Scarlette	" " "
Ingrid Goodman	Healthy Start Academy
Tawanya Reams	Healthy Start Academy
Gloria Alston	Healthy Start Academy
Bob Smith	Arapahoe Charter School
Merritt Watson	Arapahoe Charter School

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Katie G. Palmer	SPARC Academy Raleigh NC
Jackie Mburu	SPARC Academy P.O. Box 28274 Ral 27611
Sekou Kaalund	SPARC Academy Raleigh NC
Roger Gerber	Association of NC Charter Schools
Daz Hayes	John Locke Foundation
Liz Maley	Healthy Start
Renee Harrington	Healthy Start
Venessa Spence	Healthy Start

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, JULY 7, 1998

8:30 A.M. ROOM 544-LOB

Rep. Dickson called the meeting to order and introduced the Pages and staff. A silent roll was taken, (roll list denotes members present).

SB-77 SALES TAX REFUND FOR SCHOOLS

Rep. Shubert explained the bill in the absence of Sen. Winner. Rep. Starnes moved for a favorable report. Rep. Cunningham questioned the effective date and Ms. Cindy Avrette, Research Division responded. The vote was taken the bill was given a favorable report.

SB-1150 AMEND LOCAL SALES TAX

Sen. Dalton explained. Rep. Rayfield moved for a favorable report. Rep. Cunningham questioned staff about the sunset and Ms. Avrette answered. Rep. Starnes questioned which counties it affects and Mr. Richard Bostic, Fiscal Research Division and Sen. Dalton responded. The vote was taken and the bill was given a favorable report.

SB-1289 CLARIFY TRANSIT AUTHORITY DEBT

Sen. Gulley wasn't present to explain his bill so the Chairman announced it would be rescheduled for another day.

The meeting adjourned at 8:45.

W Dickson
Rep. Dickson, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

TUESDAY, JULY 7, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Dickson

BILLS FOR DISCUSSION:

SB-77 Sales Tax Refunds for Schools	Sen. Winner
SB-1150 Amend Local Sales Tax	Sen. Dalton
SB-1289 Clarify Transit Authority Debt	Sen. Gulley

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 77*
Finance Committee Substitute Adopted 6/23/98

Short Title: Sales Tax Refund for Schools. (Public)

Sponsors:

Referred to:

February 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW LOCAL BOARDS OF EDUCATION TO RECEIVE REFUNDS OF SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. -- A governmental entity listed in this subsection is allowed an annual refund of sales and use tax paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(2b) A local school administrative unit.

(3) A metropolitan sewerage district or a metropolitan water district in this State.
(4) A water and sewer authority created under Chapter 162A of the General Statutes.
(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
(6) A sanitary district.
(7) A regional solid waste management authority created pursuant to G.S. 153A-421.
(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
(9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.
(10) A regional council of governments created pursuant to G.S. 160A-470.
(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:
a. It has all of the rights of a municipality.
b. A local act of the General Assembly declares it to be a municipality.
c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.
(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.

(18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.

(19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.

(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.

(21) The University of North Carolina Hospitals at Chapel Hill.

(22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes."

Section 2. This act becomes effective July 1, 1998, and applies to purchases made on or after that date.

EXPLANATION OF SENATE BILL 77:
Sales Tax Refunds for Schools (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Staff Attorney
DATE: July 6, 1998
SPONSOR: Senator Winner

Senate Bill 77 would add local school administrative units to the list of governmental entities that may obtain an annual refund of the State and local sales and use taxes paid by them. The bill becomes effective July 1, 1998, and applies to purchases made on or after that date. This bill is substantially the same as House Bill 271. The House Finance Committee gave House Bill 271 a favorable report in March of 1997. House Bill 271 is in the Senate Finance Committee.

The refunds apply to direct purchases of tangible personal property. They also apply to sales and use tax liability indirectly incurred by a local school administrative unit on building materials, supplies, fixtures, and equipment that become a part of any building that is owned or leased by the unit and is being built, altered, or repaired for use by the unit. To obtain a sales and use tax refund, a local school administrative unit must request the refund in writing within six months after the end of the unit's fiscal year. The request must include any information and documentation required by the Secretary of Revenue.

Prior to 1961, the State granted sales and use tax exemptions to state and local governmental entities, including public schools, and nonprofit entities. Because of the number of abuses involving the exemption and the difficulty of auditing these transactions, the legislature changed the law in 1961 to allow refunds as opposed to outright exemptions. The statute lists those entities that are entitled to a refund. Nonprofit educational institutions, as well as most other nonprofit entities, are entitled to a semiannual refund of State and local sales and use tax.

The General Assembly did not include State agencies in the list of entities entitled to an annual refund of State and local sales taxes because the refund process would not benefit the General Fund, from which the agencies receive their appropriations, and would create unnecessary paperwork for the agencies. The General Assembly did not include public schools in the list of entities entitled to an annual refund for similar reasons. First, public school books and school lunches are exempt from sales tax. Second, most of the operating money for public schools comes from the General Fund, although most of the capital money comes from the counties.

Under current law, although a school board cannot receive sales tax refunds, a county would be entitled to a refund of State sales and use taxes paid if it purchased items on behalf of its school board. More than one-half of the counties have statutory authority to acquire property on behalf of their school boards and thus may receive sales tax refunds if they exercise that authority. The other counties do not have this authority, although the Attorney General's Office has stated that they may acquire property on behalf of their school boards if they enter into an interlocal agreement with the school board. Under this bill, the school board could receive the refunds directly, without having to arrange for the county to acquire the property and apply for the refunds on its behalf.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 77 (Second Edition)
BILL TITLE: Sales Tax Refund for Schools

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	($Million)			
	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02FY 2002-03
REVENUES:				
State General Fund		**-$14.8**	**-$15.0**	**-$14.4** **-$12.6**
Local Government		**- 7.4**	**- 7.5**	**- 7.2** **- 6.3**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The refunds are administered by the Department of Revenue.

EFFECTIVE DATE: July 1, 1998.

AMENDMENT SUMMARY: Cities, counties, and other specifically named local government authorities are allowed an annual refund for state and local sales taxes paid. The amendment would add local school administrative units to the list.

ASSUMPTIONS AND METHODOLOGY: The estimate for the current expense portion was based on a review of data shown in the *Statistical Profile: 1997* publication of the Department of Public Instruction. The data shown included current expense by spending category for the 1995-96 fiscal year. That data was grown by 6.5% per year to project the amount for future years. The analysis excluded the "materials and supplies" numbers for the "Child Nutrition" and "Transportation of Pupils" categories because public schools purchase food for use in a cafeteria tax-free under a resale certificate and the fact that the sales tax does not apply to motor fuel purchases.

For capital outlay the 1995-96 numbers were grown by 6.5% and amounts were added for the $1.8 billion school bond authorization. The analysis assumed that the remaining $900 million of authorized bonds would be issued in equal annual increments in March of each year. In addition, it was assumed that 30% of the bond proceeds would be spent in the first fiscal year after the bonds were sold, 40% the next year, and 30% the following year. Finally, the tangible personal property portion of capital outlay was assumed to be 50% of the total cost.

For capital outlay the rapid increase in the authority of counties to use installment purchase financing and certificates of participation had to be taken into account. In addition an August, 1997 opinion of the Attorney General's Office clarified the conditions under which counties and school boards may establish interlocal agreements that would allow the county to receive a refund for certain purchases of school boards. There is no hard data on the number of counties that are currently using interlocal agreements or the number of school capital projects that will be financed with installment purchases/COP's during the next few years and thus will receive refunds under current law. Discussions with the N.C. Association of County Commissioners indicates a surge of activity in the interlocal agreement arena during the 10 months since the AG's opinion. For the purpose of this analysis it was assumed that during the 1998-99 fiscal year 60% of the purchases would be covered by interlocal agreements or installment purchase financing/COP's. This share is assumed to increase by 5 percentage points per year for the next 4 years.

For verification purposes this estimate was compared to an estimate provided by the Department of Public Instruction for the 1994-95 fiscal year with FRD growth added to bring numbers to 1998-99.

TECHNICAL CONSIDERATIONS: The refund is granted in the fiscal year after the year of purchase. Thus, refunds for taxes paid on purchases during the 1998-99 fiscal year would be received during the 1999-00 fiscal year.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
APPROVED BY: Tom Covington

DATE: July 6, 1998

Jean Stewart

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 77 A BILL TO BE ENTITLED AN ACT TO ALLOW LOCAL BOARDS OF EDUCATION TO RECEIVE REFUNDS OF SALES AND USE TAXES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1150*
Finance Committee Substitute Adopted 6/23/98

Short Title: Amend Local Sales Tax. (Public)

Sponsors:

Referred to:

May 18, 1998

A BILL TO BE ENTITLED

AN ACT TO DELAY THE SUNSET OF THE REQUIREMENT THAT COUNTIES USE PART OF THE TWO HALF-CENT LOCAL SALES TAX PROCEEDS ONLY FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-487(a) reads as rewritten:

"(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes in the next ~~10~~ 23 fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes."

Section 2. G.S. 105-502(a) reads as rewritten:

"(a) Sixty percent (60%) of the revenue received by a county under this Article during the first ~~16~~ 25 fiscal years in which the tax is in effect may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect."

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

EXPLANATION OF SENATE BILL 1150:
Amend Local Sales Tax (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 6, 1998
SPONSOR: Senator Dalton
Recommendation of the Education Oversight Committee

There are three Articles of the Revenue Act that authorize counties to levy local sales and use taxes. Article 39 authorizes a one-cent tax, Article 40 authorizes a half-cent tax, and Article 42 authorizes an additional half-cent tax. Article 40, enacted in 1983, and Article 42, enacted in 1986, each provided that for the first ten fiscal years in which the tax was in effect in a county, the county was required to use a percentage of the tax revenue for public school capital outlay purposes, including retirement of outstanding debt. In 1993, the earmarking was extended for an additional five years. The first earmarking expires this year; the second will expire in 2002.

Senate Bill 1150, 2nd Edition, extends the time periods under Articles 40 and 42 so that the earmarking will continue to the year 2011. For these additional years, counties will be required to use 30% of the tax revenue from the first half-cent local sales tax (Article 40) and 60% of the tax revenue from the second half-cent local sales tax (Article 42) only for public school capital outlay purposes. In 1985, the General Assembly exempted Burke County from the restriction that it use a percentage of the first half-cent local sales tax for public school capital outlay purposes. This exemption will remain in effect.

If a county can demonstrate that it does not need the earmarked revenue to meet its public school capital needs, it may petition the Local Government Commission to authorize it to use the money for any public purposes. In making its decision, the Commission must consider not only the public school capital needs but also the other capital needs of the county.

Senate Bill 1150 also defines public school capital outlay purposes as the term is defined in the School Budget and Fiscal Control Act. The term is defined broadly in this act to include appropriations for the acquisition of real property and building s for school purposes as well as the acquisition of furniture, computers, equipment, buses, etc. The Local Government Commission currently interprets the term as it is defined in the School Budget and Fiscal Control Act. Therefore, this clarification of the law will not change the way counties are currently using the money.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 1150 (Senate Committee Substitute)
SHORT TITLE: Amend Local Sales Tax

FISCAL IMPACT		
Yes ( )	**No (X)**	**No Estimate Available ( )**

SUMMARY OF COMMITTEE SUBSTITUTE: (1) The 1983 General Assembly authorized counties to levy a ½ cent local sales tax, to be collected by the State and distributed on a per capita basis to each county area., with the requirement that 40% of the county government share should be allocated to school capital projects for the first 5 years and 30% for the next 5 years. The 1993 General Assembly extended the earmarking 5 more years. This earmarking ends with the 1997-98 fiscal year. **The Committee substitute would extend the earmarking for an additional 13 years. For all but a handful of counties the earmarking would be end on July 1, 2011.** (2) The 1986 General Assembly authorized counties to levy a ½ cent local sales tax, to be distributed on a per capita basis, with the requirement that a certain percentage of the county government portion be spent on school facilities for an 11-year period. The earmarking share for the final year was 60%. The 1993 General Assembly extended the 60% earmarking another 5 years. This earmarking will end with the 2001-02 fiscal year. **The Committee substitute would extend the earmarking an additional 9 years. This means that for all counties this earmarking would end July 1, 2011.**

EFFECTIVE DATE: July 1, 1998.

ASSUMPTIONS AND METHODOLOGY: There is no direct impact on state or local revenue or expenditures. The effect of the bill would be to extend the required earmarking of the two ½ cent local option sales taxes. For information purposes, an FRD estimate of the earmarked portion of the two taxes for the 1998-99 fiscal year is $233.8 million. In addition, from 1998-84 to 1997-98 the estimated total required earmarking has amounted to $2.0 billion.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: June 22, 1998

Doug Longue

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1150 A BILL TO BE ENTITLED AN ACT TO DELAY THE SUNSET OF THE REQUIREMENT THAT COUNTIES USE PART OF THE TWO HALF-CENT LOCAL SALES TAX PROCEEDS ONLY FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1289*
Finance Committee Substitute Adopted 6/10/98

Short Title: Clarify Transit Authority Debt. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF REGIONAL TRANSIT AUTHORITIES TO USE INSTALLMENT PURCHASE FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) is amended by adding a new subdivision to read:

"(11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter."

Section 2. G.S. 160A-610 is amended by adding a new subdivision to read:

"(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;"

Section 3. G.S. 160A-639 is amended by adding a new subdivision to read:

"(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;"

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

EXPLANATION OF SENATE BILL 1289:
Clarify Transit Authority Debt (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 6, 1998
SPONSOR: Senator Gulley
Recommendation of the Public Transit Study Committee

Senate Bill 1289 clarifies the authority of regional transit authorities to use installment purchase financing. There are two regional transit authorities: the Research Triangle Regional Public Transportation Authority, created under Article 26 of Chapter 160A of the General Statutes, and the Triad Regional Public Transportation Authority, created under Article 27 of Chapter 160A. The Triangle Regional Public Transportation Authority serves Wake, Durham, and Orange Counties. The creation of the Triad Regional Public Transportation Authority was authorized by the 1997 General Assembly. This Authority serves Forsyth, Guilford, Randolph, Davidson, and Alamance Counties. The four major cities involved in the creation of the Triad Authority are Greensboro, High Point, Winston-Salem, and Burlington.

Under current law, these authorities are authorized to use equipment trust certificates, which are similar to installment purchase contracts. Installment purchase financing is a type of local government debt created when a local unit enters into an installment contract secured by a security interest in the property constructed or renovated. Certificates of participation may be issued as part of the installment purchase financing. A certificate of participation is a document setting out the share of the local unit's debt owed to the holder of the certificate. In practice, the holder receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. Unlike the issuance of general obligation bonds, however, installment purchase financing is not subject to the vote of the people.

VISITOR REGISTRATION SHEET

House Finance — July 7, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Winner	NCSBA
Susan Harrison	WCPSS
Piper Nieters	SBE
Danny Rogers	NCDOT

1998

HOUSE FINANCE

MINUTES

Arranged in reverse order

MINUTES

HOUSE COMMITTEE ON FINANCE

THURSDAY, JULY 2, 1998

8:30 A.M. ROOM 544-LOB

Rep. C. Wilson called the meeting to order and introduced the Pages and staff. A silent roll was taken, (roll list denotes members present).

HB-1326 UPDATE IRC REF/CONFORM GIFT TAX

Rep. Gray explained that this was generated from the Revenue Laws Study committee. Rep. Russell moved for a favorable report. Rep. Miner sent forth an amendment and explained. Rep. Gray support the amendment. Rep. Luebke asked Rep. Miner and staff about the fiscal impact, he then spoke on the amendment. Mr. Sam Johnson, Attorney, addressed members. Rep. Luebke spoke again and shared concerns. Rep. Miner responded. Rep. Dickson supports the amendment. Mr. Phil Kirk, NCCBI, spoke in favor of the amendment. Rep. Brawley spoke. The vote was taken on the amendment and it was adopted. Having no further discussion the vote was taken on the bill and it was given a favorable report.

HB-1361 ANNEXATION AND INCORP. REVISION

Rep. Starnes explained the bill and urged support. Rep. Brown supports and moved for a favorable report. Rep. Dickson questioned Rep. Starnes and he replied. Rep. Russell asked about volunteer fire departments. Mr. Giles Perry, Research Division responded. Rep. Beall asked Mr. Andy Romenet, League of Municipalities if they support the bill. He advised they will endorse it as it is. Rep. Capps supports this but asked the difference in this bill and the current law. Rep. McComas inquired about paving of roads within a two year period. Rep. Starnes and Mr. Romenet responded. Rep. McComas then questioned street lighting. Mr. Romenet responded again. Having no further discussion, the vote was taken and given a favorable report.

SB-469 LOBBYIST PENALTY

Chairman Wilson announced this bill was not ready to be received back from the sub-sub committee.

Meeting adjourned at 9:15.

Connie Wilson
Rep. C. Wilson, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

THURSDAY, JULY 2, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. Wilson

BILLS FOR DISCUSSION:

HB-1326 Update IRC Ref/Conform Gift Tax	Rep. Gray
HB-1361 Annexation & Incorporation Revision	Rep. Starnes
SB-649 Lobbyist Penalty	Sen. Miller

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1326*

Short Title: Update IRC Reference/Conform Gift Tax. (Public)

Sponsors: Representatives Gray, C. Wilson (Cosponsors), Brawley, Cansler, Capps, Hill, Neely, Ramsey; Hurley, Starnes, and Hill.

Referred to: Finance.

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997,~~ June 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1326:
Update IRC Reference/Conform Gift Tax

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: June 22, 1998
SPONSOR: Representative Gray

House Bill 1326, recommended by the Revenue Laws Study Committee, makes two changes to simplify the tax law by conforming to federal tax provisions:

1. It rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1997, to June 1, 1998.
2. It conforms to federal gift tax treatment of qualified tuition programs.

Update Code Reference. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State tax law previously tracked federal law. Congress made numerous, significant changes to the Code last year that will affect federal taxable income. Because the State corporate and individual income tax is based upon federal taxable income, these changes, if adopted, will affect State policies and revenues. The fiscal note and attachments list and summarize the significant changes made by the federal Taxpayer Relief Act of 1997.[1]

One of the federal tax changes enacted last year was an income tax exemption for the annual earnings on amounts contributed to qualified tuition programs, such as North Carolina's Parental Savings Trust Fund, for the future payment of room or board at an institution of higher education. North Carolina law has a provision exempting these earnings to the extent they are taxed under federal law. Because they are no longer taxed under federal law, Section 2 of the bill repeals the North Carolina exemption. Section 3 amends a related North Carolina provision to clarify that it exempts distributions from tax only if they are used for qualified higher education expenses.

House Bill 1326 provides that the federal tax law changes that could increase a taxpayer's North Carolina taxable income for the 1997 tax year will not

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[1] Several of these changes had technical problems, which Congress has proposed to correct in H.R. 2676, the IRS overhaul bill which includes Tax Technical Corrections Act of 1997. The technical corrections were expected to be enacted by June 1, 1998, which is why SB 1227 references that date, but HR 2676 is in conference in Congress and is not expected to become law until sometime in July.

become effective until January 1, 1998. Under Article 1, Section 16 of the North Carolina Constitution, the legislature cannot pass a law that will increase a tax retroactively. There are a number of provisions in the federal Taxpayer Relief Act of 1997 that could increase taxable income for the 1997 tax year. Because the Code Update could not be acted upon until the 1998 Session of the General Assembly, these changes had to be given a delayed effective date.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this one. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law from year to year, the State may not want to adopt automatically all federal changes. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Section 2(1) of Article V of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

The Revenue Laws Study Committee explored the possibility of legislation that would automatically adopt federal changes to the Code each year, with legislative review and approval required in the succeeding legislative session. It was hoped that this approach would avoid the practical difficulties that occur when Code changes go into effect many months before the General Assembly has a chance to pass legislation adopting the changes. The Attorney General's Office reviewed the relevant case law in this State and other states before concluding that this approach would be unlikely to withstand a constitutional challenge.

Qualified Tuition Plan Gift Tax. Section 4 of House Bill 1326 adopts for North Carolina gift tax purposes the provisions of federal law listed below.

Conforming to federal law will relieve taxpayers from unexpected gift tax liability and will simplify tax compliance and administration.

1. A distribution from a qualified tuition program is not a taxable gift, unless a new beneficiary, who is a generation below the original beneficiary, is named to the account or receives the account in a rollover.
2. A contribution to a qualified tuition program is a gift to the designated beneficiary, but not a gift of a future interest. If the contribution were considered a gift of a future interest, a gift tax return would have to be filed even if the amount were under the $10,000 annual exclusion amount.
3. A contribution to a qualified tuition program is not a direct payment of tuition. If it were, it would be exempt from gift tax.
4. If a contribution exceeds the $10,000 annual gift tax exclusion amount, the donor may elect to avoid gift tax by treating the contribution as if it had been made over a five-year period. For example, a $25,000 contribution would not be taxable because it would be considered a gift of $5,000 a year over five years and thus would be below the $10,000 annual exclusion amount.

These provisions would apply to any qualified state tuition program under section 529 of the Internal Revenue Code. North Carolina has such a program, known as the Parental Savings Trust Fund. This Fund is part of the State Education Assistance Authority. The Fund is authorized by G.S. 116-209.25, which the General Assembly enacted in 1996. A person can contribute amounts into the Parental Savings Trust Fund for a child who is less than 16 years old. The amount contributed in the account, along with its interest and investment earnings, can be used to pay the expenses of the beneficiary at any accredited public or private college or community college. Either the child or the person making the contributions must be a resident of this State. The Education Assistance Authority opened the Parental Savings Trust Fund in early June, 1998.

Section 529 of the Code excludes the amounts earned on contributions to a qualified state tuition program from federal income tax and, therefore, from North Carolina tax as well. Under federal law, the earnings are exempt if the contributions are for the payment of qualified higher education expenses: tuition, room and board, fees, books, supplies, and equipment. Also under federal law, the amount distributed to a beneficiary of the Parental Savings Trust Fund for qualified higher education expenses is taxable to the extent it exceeds the amount contributed. Thus, under federal law, the tax on the investment earnings is simply deferred until a distribution is made, at which time the earnings are taxable to the beneficiary rather than the contributor. Under North Carolina law, however, the entire distribution is not taxable if it is used for qualified higher

education expenses. Under both federal and North Carolina law, earnings distributed for purposes other than qualified higher education expenses are taxable and are also subject to a penalty imposed by the state operating the program.

1997 Federal Tax Law Changes

General

The federal Taxpayer Relief Act of 1997 creates 285 new sections in the Internal Revenue Code and amends 824 existing sections. Errors in the act are expected to be corrected in 1998 in the federal Tax Technical Correction Act. The following list summarizes some of the significant provisions of the 1997 legislation.

Affects N.C. Individual Income Tax Only

1. Allows exclusion of $250,000 ($500,000 for joint filers) of capital gain from **sales of residence** occupied by taxpayer as principal residence for two of previous five years. Former rules on rollover and former one-time exclusion are repealed. Effective for sales after 5/6/97. This is a tax increase for those who have more than $250,000/$500,000 in gain, so to that extent it cannot be retroactive. (§ 121)
2. Expands business expense deduction for percentage of **self-employed individuals' health insurance**: effective in 2000, the percentage is increased to 50%, then phased up reaching 100% in 2007. (§ 16(a)(1)(B))
3. Establishes **Roth IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible contributions of up to $2,000 of compensation (limited for those with adjusted gross income above a certain amount). Distributions tax free if contributions made more than five years ago and one of the following applies: (i) taxpayer is over 59 ½ or is dead, (ii) distribution made because of disability, (iii) distribution is for qualifying first-time homebuyer expenses. Existing IRA may be rolled over to Roth IRA, subjecting rolled over amount to tax. If the IRA is rolled over to a Roth IRA in 1998, the tax due may be spread over four years. (§ 408(a))
4. Expands **existing IRAs** by increasing income limits and allowing IRA for spouse of disqualified active participant, effective for taxable years beginning on or after 1/1/98. (§219(g))
5. Establishes **Education IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible cash contributions of up to $500 a year per child under 18 (contributions limited for those with adjusted gross income above a certain amount). Annual earnings of IRA are tax-exempt and distributions are exempt to the extent spent on qualified higher education expenses. (§ 530)
6. Expands **Prepaid Tuition Programs** to include room and board as qualifying expenses, effective retroactively to August 21, 1996. N.C. already exempts these expenses. The act also expands definitions of eligible educational institution and family member, effective 1/1/98 (§ 529(c), (e)).
7. Reenacts exclusion for up to $5,250 of **employer-provided educational assistance**, effective for tax years beginning on or after 1/1/97 and for courses beginning before 6/1/2000. Does not apply to graduate level courses. (§127(d))
8. Allows above the line deduction for up to $1,000 a year of **interest paid on qualified higher education loans**, effective for interest due and paid on or after 1/1/98. The $1,000 annual limit is phased up by $500 a year until it reaches

$2,500 for 2001 and thereafter. Limited to five years of payments, and further limited for taxpayers with AGI above a certain amount. (§ 221)

9. Restricts **penalty for underpayment of estimated income tax**, so that it does not apply if total tax liability less pre-payments is less than $1,000. (N.C. piggybacks this because 105-163.15(f) references section 6654(e) of the Code.) Effective for tax years beginning on or after 1/1/98
10. Makes a small increase in **standard deduction** of individuals who can be claimed as a dependent by another (indexing not adopted), effective for tax years beginning on or after 1/1/98
11. Changes **net operating loss carryback and forward** periods from back 3 years and forward 15 years to back 2 years and forward 20 years, except for individual casualty losses and for farm and small business losses in a disaster area. Effective for tax years beginning on or after August 6, 1997. (Note, we cannot make this effective until tax years beginning on or after 1/1/98, because it is a tax increase.) Although the federal change affects both corporate and individual income tax, in NC corporate does not piggyback net operating loss treatment, so there is no effect on NC corporate income taxes.
12. Increases **charitable mileage rate** from 12¢ to 14¢, effective for tax years beginning on or after 1/1/98
13. Extends expired deduction for fair market value of **stock contributed to private foundation**, effective 5/31/97 (date of expiration) (§ 170(e)(5))
14. Expands rules governing when a **home office** qualifies as the principal place of business, effective for tax years beginning on or after 1/1/99. Note, however, that use of part of residence as home office may restrict availability of capital gain exclusion for residence.
15. Provides that capital gain from sale of certain **qualified small business stock** is not recognized to the extent the proceeds are rolled over into more qualified small business stock within 60 days, effective for sales on or after August 1, 1997.
16. Expands maximum amount of **self-employed 401(k)** contributions that may be made in certain circumstances, effective for taxable years beginning on or after 1/1/98. (§ 402, 408)
17. Provides that if an employee stock ownership plan (**ESOP**) is a shareholder in an S corporation, items of income or loss of the S corporation will not be treated as unrelated business taxable income, contrary to former law.
18. Changes tax treatment of **rural mail carriers' reimbursed mileage**, effective for tax years beginning on or after 1/1/98
19. Expands deferment of **gain from sale of livestock due to drought**, to include flood or other weather-related conditions. Effective for sales and exchanges on or after 1/1/97. (§ 451, 1033)
20. Expands **business meals/entertainment deduction for air transportation employees**, interstate truck and bus drivers, rail road employees, and merchant mariners. Increased from 50% to 55% effective for tax years beginning on or after 1/1/98. Thereafter, phased up 5% every two years to 80% in 2008.
21. Clarifies exclusion for value of **employer-provided parking**, effective for tax years beginning on or after 1/1/98.

22. Increases amount of foreign earned income that can be excluded by **US citizens residing in foreign countries**, effective for tax years beginning on or after 1/1/98, and phased up thereafter.
23. Retroactively excludes from income certain states' **disability payments to former police officers and fire fighters** in 1989, 1990, and 1991. Note: this provision applies only to certain states. If it applies to N.C., the statute of limitations will prevent refunds.
24. Excludes from income government survivor annuities for **slain public safety officers**, effective for tax years beginning on or after 1/1/97
25. Denies nonrecognition of gain when involuntarily converted property is replaced by property acquired from a related party, unless the taxpayer's aggregate gain is $100,000 or less, effective for involuntary conversions after 6/8/97. (§ 1033)
27. Changes from below the line to above the line the deduction for **State and local government official business expenses** relating to service as official, if official is compensated in whole or part on a fee basis. Effective retroactively beginning with 1987 tax year, but does not waive the three-year statute of limitations. (§62(a)(2)(c)).
28. Changes basis recovery method for pension plan payments, 1/1/98. (§72(d)).
29. Simplifies treatment of personal transactions in **foreign currency**, effective 1/1/98.
30. Increases pension full funding limit with 20-year amortization, effective 1/1/99.

Affects Partnerships (N.C. Individual Income Tax)

1. Treats as ordinary income gain attributable to inventory on sale or exchange of partnership interest and in certain partnership distributions, effective 8/5/97. (no impact)
2. Changes formula for allocation of basis among distributed assets of partnership, effective 8/5/97.
3. Extends from 5 to 7 years the period in which a partner may recognize "pre-contribution gain" with respect to contributed property when it is distributed to another partner, or when other property is distributed to the contributing partner, effective for contributions after 6/8/97.

Affects both N.C. Individual and Corporate Income Tax

1. Retroactively extends federal **R&D tax credit**, which had expired 6/1/97. N.C. law piggybacks this credit in G.S. 105-129.10.
2. Restricts types of property eligible for the more generous **income forecast method of depreciation,** effective for property placed in service on or after August 6, 1997. This method will now be allowed only for film, video tapes, sound recordings, copyrights, books, and patents.
3. Eliminates **short against the box** and similar transactions. A taxpayer must recognize gain upon entering into a constructive sale of any appreciated position in stock, etc. A constructive sale occurs if two offsetting positions are acquired in substantial identical property with the intent of reducing the taxpayer's risk

associated with the appreciated property. Gain recognized as if position sold at fair market value and repurchased on date of constructive sale. Effective 6/8/97, with transitional rules. (§ 1259).

4. Requires immediate accrual of interest or original issue discount on **pool of debt instruments** on which the principal can be paid without interest as of a certain date (e.g., credit card receivables) Effective for taxable years beginning on or after 8/5/97. (§1272)
5. Allows expensing of certain environmental remediation costs (**brownfields**) that would otherwise be chargeable to capital account. Effective for expenditures after 8/5/97 and before 2001. (§ 198)
8. Allows **inventory adjustment for estimated shrinkage** if business (1) usually makes a periodic physical count and (2) will later revise the adjustment for discrepancy between estimated shrinkage and actual shrinkage. Effective for tax years ending after 8/5/97. (§471)
9. If taxpayer enters into **short sale of property that becomes substantially worthless**, gain is recognized as if short sale closed when property became worthless. §1233(h). In addition, extends capital treatment of gains and losses under §1234A to interests in real property and nonactively traded personal property.
10. Includes income from **notional principal contracts and stock lending transactions** under Subpart F in gross income of U.S. shareholders, effective 8/5/97. (§ 951)
11. Further restricts like-kind exchanges involving foreign personal property, effective 6/8/97. (§ 1031).
12. Limits treaty benefits for payments to hybrid entities, effective 8/5/97. (§ 894).
13. Creates exception from U.S. property definition under Subpart F for certain securities positions, effective 1/1/98.
14. Exempts active financing income from Subpart F, effective during 1998 only.
15. Modifies look back method for long term contracts, effective 8/5/97.

Affects N.C. Corporate Income Tax Only

1. Recognizes gain when taxpayer exchanges property for certain preferred stock formerly not treated as "**boot**". Sections 351, 354, 355, 356, and 1036 of the Code. Effective transactions after 6/8/97.
2. Certain **corporate contributions of computer** software and equipment to schools qualify for charitable deduction in excess of otherwise applicable limit (basis of the donated property), effective for taxable years beginning on or after 1/1/98 and before 1/1/2001.
3. Repeals income deferral formerly allowed when **family farms** required to change from cash method to accrual method because gross receipts exceed $25 million. Effective for taxable years beginning on or after 7/1/96, with transitional rules.
4. Allows **Subchapter S subsidiaries** (allowed by Small Business Job Protection Act of 1996) to be treated in certain instances as separate corporations for the

purpose of applying Code provisions that benefit a certain type of entity (e.g., banks), that the subsidiary is but the parent is not. Effective 1/1/97

5. Clarifies that **software qualifies as export property** eligible for foreign sales corporation benefits, effective 1/1/98. Piggybacked by 105-130.5(a)(15)
6. Repeals deduction for premiums paid on life insurance policy or annuity in which taxpayer had an interest. Repeals deduction for **interest paid to incur life insurance coverage** where taxpayer is beneficiary and restricts deduction for taxpayer's interest expense allocable to certain cash surrender values. Also, provides pro rata disallowance of interest expense attributable to life insurance on individuals who are not officers, employees, or former employees. Effective 6/8/97.
7. Requires recognition of gain in year of extraordinary dividend if the nontaxed portion of the dividend exceeds the stock basis, and other changes. Depending on the type of extraordinary dividend, new rules effective for distributions after 5/3/95 or 9/13/95, with transition rules. .
8. Repeals law allowing manufacturers to use installment method to report income from sales to their dealers, effective for taxable years beginning on or after 8/6/98.
9. Expands circumstances in which gain is recognized upon acquisition or distribution of stock of the controlled corporation or distributing corporation, effective for transactions occurring after April 16, 1997. This change substantially restricts the availability of tax-free spinoffs. Also, effective for transfers after 6/8/97, gain recognition on transfers to investment companies expanded by expanding definition of investment company.
10. Denies **interest deduction on convertible debt** and similar debt, effective for instruments issued on or after 6/8/97. (§163(l))
11. Allows deferral of gain on sales of stock of certain corporations engaged in refining or processing agricultural products to farmers' cooperatives engaged in marketing agricultural products, effective 1/1/98. .
12. Modifies control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations, effective 1/1/99.
13. Repeals 30% gross income limitation for regulated investment companies, effective 8/5/97.

Affects Other NC Taxes

1. Extends **generation-skipping transfer tax** exemption to transfers to grandnieces and nephews where parent of transferee is deceased and transferor has no living lineal descendants at time of transfer, effective 1/1/98. (§ 2651, 2612) (We piggyback in G.S. 105-7.1.)

No Effect on N.C.

1. Allows $500 **child tax credit** ($400 in 1998). Phased out if AGI above $110,000 joint or $75,000 single/head of household

2. **Allows Education tax credits.** (1) Hope credit for portion of qualified undergraduate education tuition and fees for two years, phased out for taxpayers with AGI over certain amounts. Effective 1/1/98. (2) Lifetime learning credit for 20% of qualified undergraduate or graduate tuition, subject to cap, phased out for taxpayers with AGI over certain amounts. (§25A, 6050S)
3. **Lowers individual tax rate on capital gains.** Rate reduced from 28% to 20%. For taxpayers in 15% bracket, it is 10%. Holding period for LTCG expanded from one year to 18 months.
4. **Work opportunity tax credit** extended and expanded. New welfare to work tax credit for part of employers' wages paid to AFDC recipients, effective 1/1/98. (§ 51A)
5. Allows penalty-free (but not tax free) withdrawals from IRAs for qualified higher education expenses and first time home purchase.
6. Three-year **income averaging for farmers**, effective for 1998, 1999, and 2000 tax years. (§1301)
7. Increases **estate and gift tax unified credit** to $625,000 in 1998, $650,000 in 1999, $675,000 in 2000-01, $700,000 in 2002-03, $850,000 in 2004, $950,000 in 2005, and $1 million in 2006+
8. Reduces estate tax for land subject to permanent conservation easement, effective 1/1/98.
9. Allows **estate tax exclusion for qualified family owned business**, effective 1/1/98. This is very complex and can be narrow in its application.
10. Alternative minimum tax repealed for small corporations.
11. Alternative minimum tax depreciation adjustment eliminated for property placed in service on or after 1/1/99.
12. Farmers may use installment method of accounting for purposes of alternative minimum tax.
13. Taxpayer who fraudulently claims **earned income tax credit** is ineligible thereafter for 10 years. Also, change in definition of AGI for purpose of phasing out the EITC, effective 1/1/98.
14. Changes safe harbor test applicable to upper income individuals for purposes of penalty for underpayment of estimated taxes. We do not piggyback this. (§6654)
15. Tightens holding period rules for corporate dividends received deduction.
16. Those offering tax shelters must register with the IRS.
17. Orphan drug tax credit made permanent.

Technical/Minor - Probably Tiny Impact if Any

1. Clarifies that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance, as long as the employer does not provide long term health insurance.
2. Recaptures all depreciation (not just excess over straight line) on § 1250 property (buildings).
3. Clarifies that medical savings account withdrawals must be for an individual who was eligible (not covered by low deductible health plan) in the month the expenses were incurred.

4. Estate and its beneficiary treated as related parties for purpose of disallowing loss deduction for sales of assets to related parties and disallowing capital gains treatment for sales of depreciable property to related parties. Effective for taxable years beginning after 8/5/97. (§ 267, 1239)
5. Luxury auto depreciation limits relaxed for clean-burning fuel vehicles and electric vehicles, effective for property placed in service between 8/5/97 and 1/1/05. (§280F).
6. Employer may deduct contributions to SIMPLE 401(k) with no 15% limit, effective for taxable years beginning on or after 1/1/97. (§404(a)(3)(A))
7. Securities traders and commodity traders and dealers may elect mark to market accounting rules (previously applied only to securities dealers), effective for taxable years beginning after 8/5/97
8. Exclude from corporate unrelated business income tax income from certain corporate sponsorship payments .
9. Change treatment of travel expenses of certain federal employees engaged in criminal investigations, effective 8/5/97.
10. Changes rule for closing partnership taxable year with respect to a deceased partner, effective 1/1/98.
11. Allows deduction for contributions by ministers to retirement plans, effective 1/1/98.
12. Clarifies that **employer-provided employee meals** that are tax-free to the employee because they are for the convenience of the employer are fully deductible by employers and treated as de minimum fringe benefits effective for taxable years beginning on or after 1/1/97.
13. MedicarePlus Choice Medical Savings Accounts authorized as pilot program for individuals on Medicare, effective for taxable years beginning on or after 1/1/99. (§138, 220(b), 4973(d)).
14. Reduces **carryback period for general business credits** (such as R&D and low-income housing credits) from 3 years to 1 year, with carryforward period extended from 15 years to 20 years, effective for credits for which the taxpayer first becomes eligible in taxable years beginning on or after 1/1/98. Our R&D credit piggybacks the federal credit, and also some addbacks are allowed under our law if the taxpayer was disallowed a federal deduction for a credit for which we have no corresponding credit. (§ 39)
15. Repeals 30% gross income requirement for **real estate investment trusts**.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1326 (First Edition)
SHORT TITLE: Update IRC Reference/Conform Gift Tax
SPONSOR(S): Rep. Gray, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($ Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
GENERAL FUND	($13.13)	($12.03)	($14.85)	($20.73)	($34.77)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Section 4 (Qualified Tuition Programs) becomes effective for taxable years beginning on or after January 1, 1998. The remainder of the act is effective when it becomes law.

BILL SUMMARY: The act updates the reference to the Internal Revenue Code used in defining and determining certain state tax provisions (from January 1, 1997 to June 1, 1998) and conforms to federal gift tax treatment of contributions to qualified tuition programs.

BACKGROUND: Each year the General Assembly changes the reference date in the definition of the Internal Revenue Code used in the state individual and corporate income tax statutes. Congress made hundreds of changes in the Code with the passage of the Taxpayer Relief Act of 1997. These changes were reviewed by the Revenue Laws Study Committee and were recommended to the 1998 General Assembly with a few exceptions. Those tax law changes that affect the 1997 tax year cannot be adopted by North Carolina until 1998, because the state constitution prohibits enacting a retroactive tax increase.

ASSUMPTIONS AND METHODOLOGY: North Carolina estimates on updating the Internal Revenue Code reference are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is North Carolina's actual tax collections divided by national tax collections. (Individual = .723% and corporate = .542%.) The charts on the following pages show the fiscal impact of the major federal tax changes on the state's General Fund.

As for the gift tax change on qualified tuition programs, there should be little or no revenue loss to the state. The newly created College Vision Fund, administered by the State Education

Assistance Authority, is designed for middle income taxpayers who save an average of $125 a month for their children's college education. While gifts exceeding $10,000 may be accepted by the fund, such contributions are not the norm. Those with the means to give more than $10,000 per year will probably invest in college trust funds bearing interest greater than the interest paid by the State Treasurer on the investments in the College Vision Fund.

INTERNAL REVENUE CODE UPDATE

STATE IMPACT

	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Individual Income Tax Only						
Exclude capital gain from sale of residence	5/6/97	-3.62	-3.62	-3.62	-4.34	-4.34
Expand deduction for self-employed individuals' health insurance	2000	-	-0.28	-0.87	-1.62	-4.37
Establish Roth IRAs/Expand existing IRAs	1/1/98	-2.49	0.62	-2.50	-6.22	-13.23
Establish education IRAs	1/1/98	-4.66	-6.59	-7.66	-8.14	-10.47
Add room and board as qualifying expenses for Prepaid Tuition Programs	8/21/96	No impact - NC already exempts these expenses				
Reenact employer-provided educational assistance	1/1/97	-2.67	-1.81	-	-	-
Allow deduction of interest paid on qualified higher education loans	1/1/98	-0.50	-0.88	-1.47	-2.00	-2.23
Restrict penalty for underpayment of estimated income tax	12/31/97	-0.12	-0.13	-0.14	-0.14	-0.15
Increase standard deduction for individuals claimed as dependent by another	1/1/98	-0.27	-0.25	-0.25	-0.25	-0.25
Change net operating loss carryback and forward periods	1/1/98	0.22	0.26	0.19	0.13	0.10
Increase charitable mileage rate from 12 cents to 14 cents	1/1/98	-0.40	-0.42	-0.44	-0.46	-0.49
Extend deduction for FMV of stock contributed to private foundation	6/1/97	-0.07	-0.03	-	-	-
Expand rules on home office as principal place of business	1/1/99	-0.86	-1.76	-1.83	-1.90	-1.98
Exclude capital gain from sale of qualified small business stock	8/1/97	-0.36	-0.36	-0.36	-0.36	-0.36
Increase maximum amount of self-employed 401(k) contributions	1/1/98	No estimate available				
Modify tax treatment of Employee Stock Ownership Plans (ESOP) in S corporations	12/31/97	-0.17	-0.25	-0.30	-0.32	-0.33
Change tax treatment of rural mail carriers' reimbursed mileage	1/1/98	-0.01	-0.01	-0.01	-0.01	-0.01
Defer gain from sale of livestock due to drought, flood or other weather related event	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Expand business meals/entertainment deduction for air transportation employees, truck drivers, railroad employees, and merchant marines	1/1/98	-0.12	-0.20	-0.27	-0.35	-0.45

Internal Revenue Code Update (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Individual Income Tax Only						
Clarify exclusion of the value of employer-provided parking	1/1/98	0.06	0.08	0.09	0.09	0.09
Increase exclusion of income earned by US citizens residing in foreign countries		-0.22	-0.36	-0.48	-0.59	-0.70
Exclude from income the disability payments to former police officers and fire fighters retroactive to 1989, 1990, and 1991		-	-	-	-	-
Exclude from income government survivor annuities to slain public safety officers	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Deny nonrecognition of gain of involuntarily converted property	6/8/97	0.03	0.04	0.06	0.08	0.09
Provide an above the line deduction for state and local officials' expenses	1/1/87	-0.03	-0.03	-0.03	-0.04	-0.04
Change basis recovery method for pension plan payments modified	12/31/97	0.02	0.04	0.07	0.08	0.11
Simplify treatment of personal transactions in foreign currency	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Increase full funding limit with 20 year amortization for pensions	12/31/98	-0.03	-0.09	-0.10	-0.13	-0.14
Affects Partnerships (Individual Income Tax)						
Classify sale or exchange of inventory in partnership as ordinary income	8/5/97	No impact - NC already taxes as ordinary income				
Change formula for allocation of basis among distributed assets of partnership	8/5/97	0.38	0.40	0.41	0.43	0.44
Extend period from 5 to 7 years for recognition of precontribution gains	6/8/97	-	-	-	0.01	0.07
Affects both Individual and Corporate Income Tax						
Extend R&D tax credit retroactive to 6/1/97	6/1/97	Costs included in the Bill Lee act				
Restrict income forecast method of depreciation	8/6/97	0.30	0.45	0.56	0.27	0.20
Eliminate short against the box transaction for stock	6/8/97	0.87	0.49	0.53	0.57	0.61
Require immediate accrual of interest on pool of debt instruments	8/5/97	1.99	2.59	2.31	2.05	0.72
Allow expensing of certain environmental remediation costs for brownfields	8/5/97	-0.95	-1.19	-0.46	0.00	0.01
Allow inventory adjustment for estimated shrinkage	8/5/97	-0.15	-0.17	-0.18	-0.20	-0.21
Change gain recognition rules under sections 1233 and 1234A of the Internal Revenue Code	8/5/97	0.20	0.18	0.18	0.18	0.18

Internal Revenue Code Update (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Both Individual and Corporate License Tax						
Include income from notional principal contracts and stock lending transactions in gross income of U.S. shareholders	8/5/97	0.14	0.15	0.15	0.15	0.15
Restrict like-kind exchanges involving foreign personal property	6/8/97	0.06	0.08	0.09	0.11	0.12
Limit treaty benefits for payments to hybrid entities	8/5/97	0.01	0.01	0.01	0.01	0.01
Exempt certain securities positions from U.S. property definition under subpart F	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Exempt active financing income from subpart F	1998	-0.49	-0.02	0.00	0.00	0.00
Modify look-back method for long term contracts	8/5/97	-0.01	-0.02	-0.03	-0.03	-0.03
Affects Corporate Income Tax Only						
Recognize gain from exchange of property for preferred stock treated as boot	6/8/97	0.20	0.21	0.22	0.23	0.05
Expand charitable deduction for corporate contributions of computer software and equipment	1/1/98	-0.26	-0.42	-0.27	-0.03	-0.01
Repeal income deferral when farms change from cash method to accrual method	7/1/96	0.18	0.19	0.20	0.20	0.21
Allow Subchapter S subsidiaries to be treated as separate corporations	1/1/97	No estimate available				
Clarify that software qualifies as export property	1/1/98	-0.23	-0.79	-0.94	-0.98	-1.04
Restrict corporate deductions relating to life insurance	8/6/98	0.29	0.50	0.76	1.05	1.34
Require recognition of gain from extraordinary dividend and other changes	9/13/95	-0.50	-0.29	-0.05	0.24	0.42
Repeal law allowing manufacturers to use installment method to report sales to their dealers	8/6/98	0.24	0.53	0.57	0.57	0.35
Require gain recognition on certain distributions of controlled corporation stock and change tax treatment of redemptions involving related corporations	6/8/97	1.37	1.20	1.04	0.88	0.73
Deny interest deduction on convertible debt	6/8/97	0.09	0.16	0.23	0.30	0.34
Defer gain allowed on sales of stock of certain corporations engaged in refining or processing agricultural products to farmer cooperatives engaged in marketing agricultural products	12/31/97	-0.37	-0.03	-0.03	-0.02	-0.02
Modify control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations	12/31/98	0.00	0.00	0.02	0.03	0.03
Repeal 30% gross income limitation for regulated investment companies	8/5/97	-0.12	-0.15	-0.18	-0.21	-0.24

Internal Revenue Code Update (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affect Other NC Taxes						
Extend generation-skipping transfer tax exemption to grandnieces and grand nephews	1/1/98	-0.03	-0.03	-0.03	-0.03	-0.03
Total - IRC Update		-13.13	-12.03	-14.85	-20.73	-34.77
Gift Tax						
Treat contributions in excess of $10,000 to state pre-paid tuition plans as being made ratably over a five year period	1/1/98		Negligible revenue effect			
Technical/Minor Impact						
Clarify that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance			No estimate available			
Recapture all depreciation on section 1250 property			No estimate available			
Clarify that medical savings account withdrawals are for individual who was eligible in the month the expenses were incurred			No estimate available			
Treat estate and its beneficiaries as related parties for purpose of disallowing loss deduction for sales of assets	8/5/97		Negligible revenue effect			
Relax luxury auto depreciation limits for clean burning fuel vehicles and electric vehicles	8/5/97	-0.01	0.00	0.00	0.00	0.00
Allow employer deduction for contributions to SIMPLE 401(k) with no 15% cap	1/1/97					
Allow securities traders and commodity traders and dealers to elect mark to market accounting rules	8/5/97		No estimate available			
Exclude from unrelated business tax income certain corporate sponsorship payments	12/31/97		Negligible revenue effect			
Change treatment of travel expenses of certain federal employees engaged in criminal investigations	8/6/97		No revenue impact			
Close partnership taxable year with respect to deceased partner	12/31/97		No revenue impact			
Deduct contributions made by ministers to retirement plans	12/31/97		Negligible revenue effect			
Clarify tax-free employer-provided employee meals	1/1/97		No revenue impact			
Authorize MedicarePlus Choice Medical Savings Accounts pilot program	1/1/99		No estimate available			

Internal Revenue Code Update (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Reduce carryback period for general business credits, but increase carry forward	1/1/98	Negligible revenue effect				
Repeal 30% gross income requirement for real estate investment trusts	8/5/97	Negligible revenue effect				

NOTES:

1) North Carolina estimates are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is N.C. actual tax collections divided by national tax collections. (Individual = .723% Corporate = .542%)

2) The North Carolina constitution prohibits enacting a retroactive tax increase, so this bill cannot adopt federal revenue increasing items for the 1997 tax year. This chart assumes that half of the revenue gained from tax increases in 1997 will be received by the Department in Tax Year 1998.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington

DATE: June 8, 1998

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1326

AMENDMENT NO._____
(to be filled in by Principal Clerk)

H1326-ALC-6/17 Page 1 of __

Date_____, 199__

Comm. Sub. []
Amends Title [YES]
First Edition

Rep. Miner

moves to amend the bill on page 1, line 4,
by deleting the word "PROVISIONS" and substituting the following phrase: "PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES FROM FIVE YEARS TO TWENTY YEARS,";

and on page 2, lines 5 - 7,
by rewriting the lines to read:
"Section 6. G.S. 105-130.8 reads as rewritten:
'**§ 105-130.8. Net economic loss.**
(a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 20 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to the following limitations:

(1) The purpose in allowing the deduction of a net economic loss of a prior year ~~or years~~ is ~~that of granting~~ to grant some measure of relief to the corporation ~~which~~ that has incurred economic misfortune or ~~which~~ is otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction ~~herein specified~~ allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that ~~such loss or losses shall result~~ the loss results in the impairment of the net economic situation of the corporation so as to result in a net economic loss as ~~hereinafter defined.~~ defined in this section.

(2) The net economic loss for any year ~~shall mean~~ means the amount by which allowable deductions for the year other than prior year losses ~~shall~~ exceed income from all sources in the year including any income not taxable under this Division.

(3) Any net economic loss of ~~a prior year or~~ prior years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that ~~such carry-over~~ the loss

carried forward from the prior ~~year or~~ years ~~shall exceed~~ exceeds any income not taxable under this Division received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, ~~as defined in this Division,~~ only ~~such~~ that proportionate part of the net economic loss of a prior year shall be deductible from total income allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of ~~such~~ the loss.

(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of ~~such~~ the loss may be carried forward to a succeeding year.

(5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Division.

(6) No loss shall either directly or indirectly be carried forward more than ~~five~~ 20 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year shall maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The burden of proving eligibility for the deduction and the amount of the deduction shall rest upon the corporation, and no deduction shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection.'

Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

'(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the ~~five~~ 20 preceding years pursuant to the provisions of G.S. 105-130.8. ~~Provided, a~~ A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8.'

Section 8.(a) Sections 6 and 7 of this act are effective for taxable years beginning on or after July 1, 1998, and apply to losses incurred for taxable years beginning on or after July 1, 1992.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1326

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1326-ALC-6/17 Page 3 of __

Section 8.(b) Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1326*
Proposed Committee Substitute H1326-PCS1585

Short Title: Update IRC Reference/Conform Gift Tax. (Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES FROM FIVE YEARS TO TWENTY YEARS, AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997,~~ June 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account

ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. G.S. 105-130.8 reads as rewritten:

"**§ 105-130.8. Net economic loss.**

(a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 20 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to the following limitations:

(1) The purpose in allowing the deduction of a net economic loss of a prior year ~~or years~~ is ~~that of granting~~ to grant some measure of relief to the corporation ~~which~~ that has incurred economic misfortune or ~~which~~ is otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction ~~herein specified~~ allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that ~~such loss or losses shall result~~ the loss results in the impairment of the net economic situation of the corporation so as to result in a net economic loss as ~~hereinafter defined.~~ defined in this section.

(2) The net economic loss for any year ~~shall mean~~ means the amount by which allowable deductions for the year other than prior year losses ~~shall~~ exceed income from all sources in the year including any income not taxable under this Division.

(3) Any net economic loss of ~~a prior year or~~ prior years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that ~~such carry-over~~ the loss carried forward from the prior ~~year or~~ years ~~shall exceed~~ exceeds any income not taxable under this Division received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, ~~as defined in this Division,~~ only ~~such~~ that proportionate part of the net economic loss of a prior year shall be deductible from total income allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of ~~such~~ the loss.

(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of ~~such~~ the loss may be carried forward to a succeeding year.

(5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Division.

(6) No loss shall either directly or indirectly be carried forward more than ~~five~~ 20 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year shall maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The burden of proving eligibility for the deduction and the amount of the deduction shall rest upon the corporation, and no deduction shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection."

Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

"(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the ~~five~~ 20 preceding years pursuant to the provisions of G.S. 105-130.8. ~~Provided, a~~ A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8."

Section 8(a). Sections 6 and 7 of this act are effective for taxable years beginning on or after July 1, 1998, and apply to losses incurred for taxable years beginning on or after July 1, 1992.

Section 8(b). Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**

☐ Committee Substitute for
H.B. 1326 A BILL TO BE ENTITLED AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1361*
Committee Substitute Favorable 6/24/98

Short Title: Annex & Incorporation Revision. (Public)

Sponsors:

Referred to:

May 20, 1998

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MUNICIPAL ANNEXATION LAWS AND TO CHANGE THE CRITERIA TO BE CONSIDERED BY THE JOINT LEGISLATIVE COMMISSION ON MUNICIPAL INCORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-277.4(b) reads as rewritten:

"(b) Appraisal at Present-use Value. -- Upon receipt of a properly executed application, the assessor shall appraise the property at its present-use value as established in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its present-use value, the assessor shall appraise the improvements located on qualifying land according to the schedules and standards used in appraising other similar improvements in the county. If all or any part of a qualifying tract of land is located within the limits of an incorporated city or town, or is property annexed subject to G.S. 160A-37(f1) or G.S. 160A-49(f1), the assessor shall furnish a copy of the property record showing both the present-use appraisal and the valuation upon which the property would have been taxed in the absence of this classification to the collector of the city or town. He shall also notify the tax collector of any changes in the appraisals or in the eligibility of the property for the benefit of this classification. Upon a request for a certification pursuant to G.S. 160A-37(f1) or G.S.160A-49(f1), or any change in the certification, the assessor for the county where the land subject to the annexation is located shall, within 30 days, determine if the land meets the requirements of G.S. 160A-37(f1)(2) or G.S. 160A-49(f1)(2) and report the results of its findings to the city."

Section 2. G.S. 120-166 reads as rewritten:

"**§ 120-166. Additional criteria; nearness to another municipality.**

(a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget and Management if the municipality was incorporated since the return of that census.

(b) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

(1) The proposed municipality is entirely on an island that the nearby city is not on;

(2) The proposed municipality is separated by a major river or other natural barrier from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;

(3) The ~~nearby municipality~~ municipalities within the distances described in subsection (a) of this section by resolution ~~expresses its~~ express their approval of the incorporation; or

(4) An area of at least fifty percent (50%) of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160A-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved."

Section 3. Article 20 of Chapter 120 is amended by adding a new section to read:

"**§ 120-169.1. Additional criteria; level of development, services.**

(a) Level of Development. -- The Commission may not make a positive recommendation unless the entire area proposed for incorporation meets the applicable criteria for development under G.S. 160A-36(c) or G.S. 160A-48(c).

(b) Services. -- The Commission may not make a positive recommendation unless the area to be incorporated submits a plan for providing a reasonable level of municipal services. To meet the requirements of this subsection, the persons submitting the plan for incorporation must propose to provide at least two of the following services:

(1) Police protection.

(2) Fire protection.

(3) Garbage and refuse collection or disposal.

(4) Water distribution.

(5) Sewer collection or disposal.

(6) Street maintenance, construction, or right-of-way acquisition.

(7) Street lighting.

(8) Adoption of citywide planning and zoning."

Section 4. G.S. 160A-35 reads as rewritten:

"**§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.**

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:
   a. The present and proposed boundaries of the municipality.
   b. The proposed extensions of water mains and sewer outfalls to serve the annexed area, if such utilities are operated by the municipality. The water and sewer map must bear the seal of a registered professional engineer or a licensed surveyor.

(2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-36.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
   a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.
   b. Provide for extension of water mains and sewer lines into the area to be annexed so that property owners in the area to be annexed will be able to secure public water and sewer services according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If the municipality must, at its own expense, extend water and/or sewer mains into the area to be annexed before property owners in the area can,

according to municipal policies, make such connection to such lines, then the plans must call for contracts to be let and construction to begin on such lines within one year following the effective date of annexation. In areas where the installation of sewer is not economically feasible due to the unique topography of the area, the municipality may agree to provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated.

c. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(5) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of the public informational meeting on any annexation under this Part."

Section 5. G.S. 160A-35.1 reads as rewritten:

"**§ 160A-35.1. Limitation on change in financial participation prior to annexation.**

~~No~~ For purposes of the extension of water and sewer services required under G.S. 160A-35, no ordinance or policy substantially diminishing the financial participation of a municipality in the construction of water or sewer facilities required under this Article may apply to an area being annexed unless the ordinance or policy became effective at least 180 days prior to the date of adoption by the municipality of the resolution giving notice of intent to consider annexing the area under G.S. 160A-37(a)."

Section 6. G.S. 160A-36 reads as rewritten:

"**§ 160A-36. Character of area to be annexed.**

(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) The area to be annexed must be developed for urban ~~purposes.~~ purposes at the time of approval of the report provided for in G.S. 160A-35. For purposes of this section, a lot or tract shall not be considered in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract. For purposes of this section, acreage in use for commercial, industrial, institutional, or governmental purposes shall include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities. Area of streets and street rights-of-way shall not be used to determine total acreage under this section. An area developed for urban purposes is defined ~~as any~~ as:

(1) Any area which is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts ~~five~~ three acres or less in size.

(2) An area so developed that, at the time of the approval of the annexation report, all tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes.

(3) ~~An area developed for urban purposes is also the~~ The entire area of any county water and sewer district created under G.S. 162A-

86(b1), but this ~~sentence~~ subsection only applies to annexation by a municipality if that:

~~(1)~~ a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

~~(2)~~ b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this ~~sentence~~ subsection only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board ~~shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries.~~ shall use recorded property lines and streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(e) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b)."

Section 7. G.S. 160A-37 reads as rewritten:

"**§ 160A-37. Procedure for annexation.**

(a) Notice of Intent. -- Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under ~~consideration~~ consideration, fix a date for the public informational meeting, and fix a date for a public hearing on the question of ~~annexation, the~~ annexation. The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution. The date for ~~such~~ the public hearing to be not less than ~~45~~ 60 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. -- The notice of public hearing shall:

(1) Fix the date, hour and place of the public informational meeting and the date, hour, and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.

(3) State that the report required in G.S. 160A-35 will be available at the office of the municipal clerk at least 30 days prior to the date of the public ~~hearing.~~ informational meeting.

(4) Include an explanation of an owner's rights pursuant to subsection (f1) and (f2) of this section.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the ~~hearing~~ informational meeting in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of

the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public ~~hearing.~~ informational meeting. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public ~~hearing.~~ informational meeting. In addition, notice shall be mailed at least four weeks prior to date of the ~~hearing~~ informational meeting, by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the ~~hearing,~~ informational meeting, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the ~~hearing.~~ informational meeting. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public ~~hearing~~ informational meeting on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notice shall certify that fact to the governing board.

(c) Action Prior to ~~Hearing.~~ Informational Meeting. -- At least 30 days before the date of the public ~~hearing,~~ informational meeting, the governing board shall approve the report provided for in G.S. 160A-35, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk at least 30 days before the public ~~hearing~~ informational meeting a legible map of the area to be annexed and a list of the persons holding freehold interests in property in the area to be annexed that it has identified.

(c1) Public Informational Meeting. -- At the public informational meeting a representative of the municipality shall first make an explanation of the report required in G.S. 160A-35. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given the opportunity to ask questions and receive answers regarding the proposed annexation.

(d) Public Hearing. -- At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-35. Following such explanation, all persons resident or owning property in the territory described in

the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. -- The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. -- Except as provided in subsection (f1) of this section, from ~~From~~ and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning

of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(f1) Property Subject to Present-Use Value Appraisal. -- If an area described in an annexation ordinance includes agricultural land, horticultural land, or forestland that on the effective date of annexation is:

(1) Land that is being taxed at present-use value pursuant to G.S. 105-277.4; or

(2) Land that:

a. Was on the date of the resolution of intent for annexation being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in use for actual production for the required time under G.S. 105-277.3; and

b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision

the annexation becomes effective as to that property pursuant to subsection (f2) of this section.

(f2) Effective Date of Annexation for Certain Property. -- Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-227.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city.

(g) Simultaneous Annexation Proceedings. -- If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. -- If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-35(3) and 160A-37(e), such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-35(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-35(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

(1) If the plans submitted under the provisions of G.S. 160A-35(3)c require the construction of major trunk water mains and sewer outfall lines and

(2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or a planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for ~~annexation;~~ annexation and included a statement in the resolution notifying persons subject to the annexation of their rights under subsections (f1) and (f2) of this section; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map, shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution.

(j) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance.

(k) If a city fails to deliver police protection, fire protection, solid waste or street maintenance services as provided for in G.S. 160A-35(3)a. within 60 days after the effective date of the annexation, the owner of the property may petition the Local

Government Commission for abatement of taxes to be paid to the city for taxes that have been levied as of the end of the 60-day period, if the petition is filed not more than 90 days after the expiration of the 60-day period. If the Local Government Commission finds that services were not extended by the end of the 60-day period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after extension of the municipal services."

Section 8. G.S. 160A-37.2 reads as rewritten:

"**§ 160A-37.2. Assumption of debt.**

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 17 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the assessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes ~~effective.~~ effective or another date for valuation mutually agreed upon by the city and the fire department.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved."

Section 9. G.S.160A-37.3 is amended by adding a new subsection to read:

"(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than ~~five~~ 10 business days following a written request of the ~~city~~ city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 10 business days following receipt of the written request for information from the city, provided that the city's written request states that statutory rights will be forfeited in the absence of a timely response and includes a specific reference to this section."

Section 10. G.S. 160A-38 reads as rewritten:

"**§ 160A-38. Appeal.**

(a) Within ~~30 days~~ 60 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the

municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-36 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within ~~five days~~ 10 days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-35.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Chapter, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed or

(2) That the provisions of G.S. 160A-35 were not met, or

(3) That the provisions of G.S. 160A-36 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to

the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court, Court of Appeals or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for a rehearing or for discretionary review shall be treated as a final judgement.

(j) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-37.1(i) or G.S. 160A-37.3(g).

(k) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal.

(l) Any settlement agreed to by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 11. G.S. 160A-42 reads as rewritten:

"**§ 160A-42. Land estimates.**

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to

provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the ~~municipality.~~ municipality as provided in this section unless the actual total area or degree of subdivision falls below the standards in G.S. 160A-36:

(1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.

(2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 12. G.S. 160A-47 reads as rewritten:

"**§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.**

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:
   a. The present and proposed boundaries of the municipality.
   b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The water and sewer map must bear the seal of a registered professional engineer.
   c. The general land use pattern in the area to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-48.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
   a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of

providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.

b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If requested by the owner of an occupied dwelling unit or an operating commercial or industrial property in writing on a form provided by the municipality, which form acknowledges that such extension or extensions will be made according to the current financial policies of the municipality for making such extensions, and if such form is received by the city clerk ~~not less than 30 days before adoption of the annexation ordinance,~~ no later than five days after the public hearing, provide for extension of water and sewer lines to the property or to a point on a public street or road right-of-way adjacent to the property according to the financial policies in effect in such municipality for extending water and sewer lines. If any such requests are timely made, the municipality shall at the time of adoption of the annexation ordinance amend its report and plan for services to reflect and accommodate such ~~requests.~~ requests, if an amendment is necessary. In areas where the municipality is required to extend sewer service according to its policies, but the installation of sewer is not economically feasible due to the unique topography of the area, the municipality shall provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated.

c. If extension of major trunk water mains, sewer outfall lines, sewer lines and water lines is necessary, set forth a proposed timetable for construction of such mains, outfalls and lines as soon as possible following the effective date of annexation. In any event, the plans shall call for construction to be completed within two years of the effective date of annexation.

d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(5) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of the public informational meeting on any annexation under this Part."

Section 13. G.S. 160A-47.1 reads as rewritten:

"**§ 160A-47.1. Limitation on change in financial participation prior to annexation.**

~~No~~ For purposes of the extension of water and sewer services required under G.S. 160A-47, no ordinance or policy substantially diminishing the financial participation of a municipality in the construction of water or sewer facilities required under this Article may apply to an area being annexed unless the ordinance or policy became effective at least 180 days prior to the date of adoption by the municipality of the resolution giving notice of intent to consider annexing the area under G.S. 160A-49(a)."

Section 14. G.S. 160A-48 reads as rewritten:

"**§ 160A-48. Character of area to be annexed.**

(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire

territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban ~~purposes.~~ purposes at the time of approval of the report provided for in G.S. 160A-47. Area of streets and street rights-of-way shall not be used to determine total acreage under this section. An area developed for urban purposes is defined as any area which meets any one of the following standards:

(1) Has a total resident population equal to at least ~~two~~ two and three-tenths persons for each acre of land included within its boundaries; or

(2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts ~~five~~ three acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or

(3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts ~~five~~ three acres or less in ~~size; or~~ size. For purposes of this section, a lot or tract shall not be considered in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract. For purposes of this section, acreage in use for commercial, industrial, institutional, or governmental purposes shall include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities; or

(4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:
a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and
b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;
provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a ~~municipality.~~ municipality; or

(5) Is so developed that, at the time of the approval of the annexation report, all tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

(1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or water and/or sewer lines through such sparsely developed area; or

(2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. For purposes of this subsection, 'necessary land connection' means an area that does not exceed twenty-five percent (25%) of the total area to be annexed.

(e) In fixing new municipal boundaries, a municipal governing board ~~shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries.~~ shall use recorded property lines and streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(f) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b)."

Section 15. G.S. 160A-49 reads as rewritten:

"**§ 160A-49. Procedure for annexation.**

(a) Notice of Intent. -- Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under ~~consideration~~ consideration, fix a date for a public informational meeting, and fix a date for a public hearing on the question of ~~annexation, the~~ annexation. The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution. The date for ~~such~~ the public hearing to be not less than ~~45~~ 60 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. -- The notice of public hearing shall:

(1) Fix the date, hour and place of the public informational meeting and the date, hour, and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.

(3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public ~~hearing.~~ informational meeting.

(4) Include a notice of a property owner's rights to request water and sewer service in accordance with G.S. 160A-47.

(5) Include an explanation of a property owner's rights pursuant to subsections (f1) and (f2) of this section.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the ~~hearing~~ informational meeting in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public ~~hearing.~~ informational meeting. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public ~~hearing.~~ informational meeting. In addition, notice shall be mailed at least four weeks prior to date of the ~~hearing~~ informational meeting by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the ~~hearing,~~ informational meeting, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the ~~hearing.~~ informational meeting. Failure to comply with the mailing requirements of this subsection shall not invalidate the annexation unless it is

shown that the requirements were not substantially complied with. If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public ~~hearing~~ informational meeting on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notices shall certify that fact to the governing board.

(c) Action Prior to ~~Hearing.~~ Informational Meeting. -- At least 30 days before the date of the public ~~hearing,~~ informational meeting, the governing board shall approve the report provided for in G.S. 160A-47, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk, at least 30 days before the public ~~hearing,~~ informational meeting, a legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed that it has identified.

(c1) Public Informational Meeting. -- At the public informational meeting a representative of the municipality shall first make an explanation of the report required in G.S. 160A-47. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given the opportunity to ask questions and receive answers regarding the proposed annexation.

(d) Public Hearing. -- At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-47. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. -- The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47, provided that if the annexation report is amended to show additional subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not listed in the original report, the city must hold an additional public hearing on the annexation not less than 30 nor more than 90 days after the date the report is amended, and notice of such new hearing shall be given at the first public hearing. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A- 48 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries

of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A- 48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)(b) found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than ~~40 days~~ 70 days nor more than 400 days from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. -- Except as provided in subsection (f1) of this section, from ~~From~~ and after the effective date of the annexation ordinance, the(f) Effect of Annexation Ordinance. -- From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. Provided that annexed property which is a part of a sanitary district, which has installed water and sewer lines, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five years after the effective date of annexation. If this proviso should be declared by a court of competent jurisdiction to be in violation of any provision of the federal or State Constitution, the same shall not affect the remaining provisions of this Part. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinances from and after the effective date of annexation.

(f1) Property Subject to Present-Use Value Appraisal. -- If an area described in an annexation ordinance includes agricultural land, horticultural land, or forestland that on the effective date of annexation is:

(1) Land that is being taxed at present-use value pursuant to G.S. 105-277.4; or

(2) Land that:

a. Was on the date of the resolution of intent for annexation being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in use for actual production for the required time under G.S. 105-277.3; and

b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision

the annexation becomes effective as to that property pursuant to subsection (f2) of this section.

(f2) Effective Date of Annexation for Certain Property. -- Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-227.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city.

(g) Simultaneous Annexation Proceedings. -- If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. -- If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-47(3) and 160A-49(e), for any required service other than water and sewer services such person may apply for a writ of mandamus under the

provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-47(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-47(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

If, not earlier than 24 months from the effective date of the annexation, and not later than 27 months from the effective date of the annexation, any person owning property in the annexed area can show that the plans submitted under the provisions of G.S. 160A-47(3)c require the construction of major trunk water mains and sewer outfall lines and if construction has not been completed within two years of the effective date of the annexation, relief may also be granted by the superior court by an order to the municipality to complete such lines and outfalls within a certain time. Similar relief may be granted by the superior court to any owner of property who made a timely request for a water or sewer line, or both, pursuant to G.S. 160A-47(3)b and such lines have not been completed within two years from the effective date of annexation in accordance with applicable city policies and through no fault of the owner, if such owner petitions for such relief not earlier than 24 months following the effective date of annexation and not later than 27 months following the effective date of annexation.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for ~~annexation;~~ annexation and included a statement in the resolution notifying persons subject to the annexation of their rights under subsections (f1) and (f2) of this section; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map and shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution.

(j) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both

provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance.

(k) If a valid request for extension of a water or sewer line has been made under G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the effective date of the annexation ordinance, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the two-year period, if such petition is filed not more than 60 days after the expiration of the two-year period. If the Local Government Commission finds that the extension to the property was not complete by the end of the two-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after completion of the extension. In addition, if the Local Government Commission found that the extension to the property was not completed by the end of the two-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the two-year period expired, the city made an appropriation for construction, operation or maintenance of a water or sewer system (other than payments the city made as a customer of the system) from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for water and sewer services. By way of illustration, if a net amount of one hundred thousand dollars ($100,000) was appropriated for water or sewer construction, operation or maintenance from a fund which had total expenditures of ten million dollars ($10,000,000) and the petitioner's tax levy was one thousand dollars ($1,000), the amount of release or refund shall be ten dollars ($10.00).

(l) If a city fails to deliver police protection, fire protection, solid waste or street maintenance services as provided for in G.S. 160A-47(3)a. within 60 days after the effective date of the annexation, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city for taxes that have been levied as of the end of the 60-day period, if the petition is filed not more than 90 days after the expiration of the 60-day period. If the Local Government Commission finds that services were not extended by the end of the 60-day period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after extension of the municipal services."

Section 16. G.S. 160A-49.2 reads as rewritten:

"**§ 160A-49.2. Assumption of debt.**

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 16 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide

fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the assessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes ~~effective.~~ effective or another date for valuation mutually agreed upon by the city and the fire department.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved."

Section 17. G.S. 160A-49.3(h) reads as rewritten:

"(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than ~~five~~ 10 business days following a written request of the ~~city~~ city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 10 business days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section."

Section 18. G.S. 160A-50 reads as rewritten:

"**§ 160A-50. Appeal.**

(a) Within ~~30 days~~ 60 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-48 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within ~~five days~~ 10 days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-47.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed, or

(2) That the provisions of G.S. 160A-47 were not met, or

(3) That the provisions of G.S. 160A-48 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement

of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court or appellate division, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for rehearing or for discretionary review shall be treated as a final judgement.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-49.1(g) or G.S. 160A-49.3(g), and a stay is granted, then the time periods of two years, 24 months or 27 months provided in G.S. 160A-47(3)c, 160A-49(h), or 160A-49(j) are each extended by the lesser of the length of the stay or one year for that annexation.

(k) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-49.1(i) or G.S. 160A-49.3(g).

(l) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal.

(m) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 19. G.S. 160A-54 reads as rewritten:

"**§ 160A-54. Population and land estimates.**

In determining population and degree of land subdivision for purposes of meeting the requirements of G.S. 160A-48, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the reviewing court shall accept the estimates of the ~~municipality:~~ municipality unless the actual population, total area, or degree of land subdivision falls below the standards in G.S. 160A-48:

(1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in such area, or in the township or townships of which such area is a part, as determined by the last preceding federal decennial census; or if it is based on a new enumeration carried out under reasonable rules and regulations by the annexing municipality;

provided, that the court shall not accept such estimates if the petitioners demonstrate that such estimates are in error in the amount of ten percent (10%) or more.

(2) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.

(3) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 20. This act becomes effective November 1, 1998, and applies to annexations for which the resolution of intent is adopted on or after that date. Sections 2 and 3 shall not apply to any incorporation proposal originally presented to the Joint Legislative Commission on Municipal Incorporations prior to the effective date.

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July 2, 1998

MEMORANDUM

To: Members of the House Finance Committee

From: Giles S. Perry, Staff Attorney

Re: House Bill 1361 A BILL TO BE ENTITLED AN ACT TO REVISE THE MUNICIPAL ANNEXATION LAWS AND TO CHANGE THE CRITERIA TO BE CONSIDERED BY THE JOINT LEGISLATIVE COMMISSION ON MUNICIPAL INCORPORATION
House Judiciary II Committee Substitute Favorable 6/24/98

Section 1 requires the property tax assessor to notify the city of property annexed subject to loss of farm use value, as provided in Section 7 and 15 of the bill.

Section 2 changes the criteria to be considered by the Joint Legislative Commission on Municipal Incorporation to allow the Commission to make a positive recommendation on an incorporation within specified distances of existing municipalities, if those municipalities express their approval of the incorporation.

Section 3 adds additional criteria to be considered by the Joint Legislative Commission on Municipal Incorporation – in order to grant a positive recommendation, the area to be incorporated would have to meet the same development standards as provided in the annexation statutes, and the proposed municipality would have to plan to offer at least two of seven listed services.

Section 4 amends the prerequisites to annexation for municipalities of less than 5,000 to allow maintenance of septic systems in lieu of sewer service, if sewer service could not be provided economically, and to require a statement of the effect of the annexation on city finances and services.

Section 5, applicable to municipalities under 5,000, clarifies that the current limitation on changes to municipal water and sewer financial polices only applies for the purposes of extensions required under G.S. 160A-35 for newly annexed areas.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 6 amends the statute setting out the character of the area to be annexed by a municipality of less than 5,000. This section:
--requires that the determination of "developed for urban purposes" under the statute must be made by the time of the approval of the annexation report;
--forbids the use of streets and rights-of-way to determine total acreage of the area developed for urban purposes;
--attempts to more clearly define commercial, industrial, institutional, and governmental use;
--authorizes annexation of single commercial, industrial, institutional, and governmental use tracts; and
--changes the restriction of what features can be used as municipal boundaries.

Section 7, applicable to municipalities under 5,000:
--amends the current annexation procedure to require a public informational meeting prior the public hearing, where citizens can ask questions and receive answers;
--requires cities not to tax or provide services to any land in a proposed involuntary annexation that is under farm use value until the land loses that classification;
--requires a statement in the resolution of intent to annex of persons rights concerning farm-use property; and
--authorizes citizens of newly annexed areas to apply to the Local Government Commission for tax relief if the municipality does not provide promised police, fire, solid waste, or street maintenance services.

Section 8, applicable to municipalities under 5,000, authorizes city-rural fire department agreements on valuations for assumed debt.

Section 9, applicable to municipalities under 5,000, requires potential solid waste contractors that have previously expressed interest in contracting with the city to respond within 10 days of a city request for information.

Section 10, applicable to municipalities of less than 5,000:
--extends the time for appeal from 30 to 60 days following passage of the ordinance;
--extends from 5 to 10 days the time of the petitioner to serve the municipality;
--authorizes the court to declare the annexation ordinance null and void, if the court finds that it cannot be corrected on remand; and
--authorizes superior court approval of annexation dispute settlements.

Section 11, applicable to municipalities under 5,000, requires land subdivision estimates used in an annexation to at least meet the minimum requirements of G.S. 160A-36.

Section 12, applicable to municipalities of 5,000 or more:
--requires the opportunity to request water and sewer service be open until five days after the public hearing;
--amends the prerequisites to annexation to allow maintenance of septic systems in lieu of sewer service, if sewer service could not be provided economically; and
--requires a statement of the effect of the annexation on city finances and services.

Section 13, applicable to municipalities of 5,000 or more, clarifies that the current limitation on changes to municipal water and sewer financial polices only applies for the purposes of extensions required under G.S. 160A-47 for newly annexed areas.

Section 14 amends the statute setting out the character of the area to be annexed by a municipality of 5,000 or more. This section:
--requires that the determination of "developed for urban purposes" under the statute must be made by the time of the approval of the annexation report;
--forbids the use of streets and rights-of-way to determine total acreage of the area developed for urban purposes;
--increases the required density under "developed for urban purposes test #1 from 2 to 2.3 persons per acre;
--reduces the required acreage for the lots and tracts under "developed for urban purposes" test #2 and #3 from five to three acres;
--attempts to more clearly define commercial, industrial, institutional, and governmental use;
--authorizes annexation of single commercial, industrial, institutional, and governmental use tracts;
--restricts "necessary land connections to 25% of the area to be annexed; and
--changes the restriction of what features can be used as municipal boundaries.

Section 15, applicable to municipalities of 5,000 of more:
--amends the current annexation procedure to require a public informational meeting prior the public hearing, where citizens can ask questions and receive answers;
--requires notice of the opportunity to request water and sewer service be included in the notice of the public hearing.
--requires cities not to tax or provide services to any land in a proposed involuntary annexation that is under farm use value until the land loses that classification;
--requires a statement in the resolution of intent to annex of persons rights concerning farm-use property;
--authorizes citizens of newly annexed areas to apply to the Local Government Commission for tax relief if the municipality does not provide promised police, fire, solid waste, or street maintenance services; and
--changes time annexation ordinance can become effective, if there was a resolution of consideration, from 70-400 days.

Section 16, applicable to municipalities of 5,000 or more, authorizes city-rural fire department agreements on valuations for assumed debt.

Section 17, applicable to municipalities of 5,000 or more, requires potential solid waste contractors that have previously expressed interest in contracting with the city to respond within 10 days of a city request for information.

Section 18, applicable to municipalities of 5,000:
--extends the time for appeal from 30 to 60 days following passage of the ordinance;
--extends from 5 to 10 days the time of the petitioner to serve the municipality;
--authorizes the court to declare the annexation ordinance null and void, if the court finds that it cannot be corrected on remand; and
--authorizes superior court approval of annexation dispute settlements.

Section 19, applicable to municipalities of 5,000 or more, requires population, area and land subdivision estimates for areas to be annexed to at least meet the minimum requirements of G.S. 160A-48.

Section 20 provides that the bill would become effective November 1 1998 and applies to annexation for which the resolution of intent is adopted on or after that date. The changes to the criteria of the Joint Legislative Commission on Municipal Incorporation would not affect annexation proposals presented to the Commission prior to the effective date

CHARACTERISTICS OF AREAS THAT CAN BE ANNEXED INVOLUNTARILY

CURRENT LAW Cities of less than 5,000	CURRENT LAW Cities of 5,000 or more
G.S. 160A-36 If an area is to be involuntarily annexed, it must meet **all** four of the following characteristics: **1. Adjacent or contiguous to city** **2. 1/8 of external boundary of area must coincide with the city boundary** **3. Not part of another city** **4. Developed for urban purposes, meaning:** a. 60% of all lots and tracts in area to be annexed must be used for residential, commercial, industrial, institutional or governmental purposes, AND b. 60% of the total acreage (not counting acreage used for commercial industrial, institutional or governmental purposes) consists of lots or tracts of five acres or less.	G.S. 160A-48 If an area is to be involuntarily annexed, it must meet **all** four of the following characteristics: **1. Adjacent or contiguous to city** **2. 1/8 of external boundary of area must coincide with the city boundary** **3. Not part of another city** **4. Part or all of the area must be developed for urban purposes, meaning ONE of the following:** a. Total resident population equal to two persons per acre b. Total resident population of one person per acre, and subdivided into lots and tracts so that at least 60% of the total acreage consists of tracts five acres or less and at least 65% of the total number of lots and tracts are one acre or less c. Developed so that 60% of the total number of lots and tracts are used for residential, commercial, industrial, institutional or governmental purposes, and subdivided into lots and tracts such that 60% of the total acreage (not counting the acreage used for commercial industrial, governmental or institutional purposes) consists of lots and tracts five acres or less in size d. area of county water and sewer district (in certain circumstances)
In addition, the **new municipal boundary** created by the annexation must follow natural topographic features *wherever practical*	In addition, the **new municipal boundary** created by the annexation must follow natural topographic features *wherever practical* In addition, city can annex: 1. Necessary land connections

Chart prepared by Giles S. Perry,
Research Division (919) 733-2578

SERVICES—Cities of less than 5,000

CURRENT LAW

G.S. 160A-35

Police
Fire
Solid Waste Collection
Street Maintenance
Provided upon annexation on substantially the same basis, in the same manner as provided in rest of city prior to annexation

Water mains and sewer lines
Provided so that property owners may be able to secure service according to municipal policies. Construction must begin within one year of annexation

SERVICES—Cities of 5,000 or more

CURRENT LAW

G.S. 160A-47

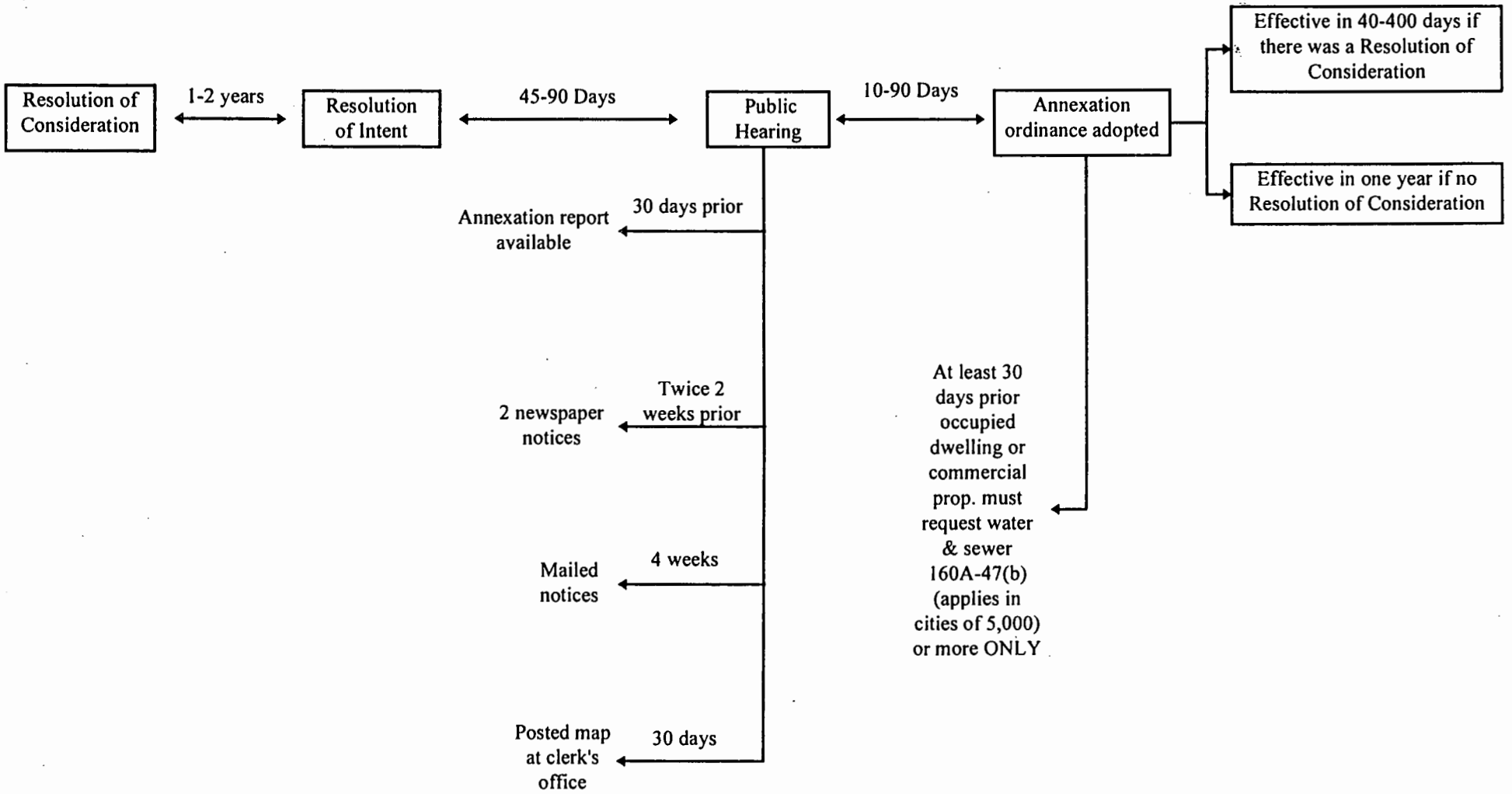
Police
Fire
Solid Waste Collection
Street Maintenance
Provided upon annexation on substantially the same basis, in the same manner as provided in rest of the city prior to annexation

Major trunk water mains
sewer outfall lines
sewer lines and water lines
Provided so that property owner in the area to be annexed will be able to secure water and sewer service, according to municipal policies. Construction of mains, outfalls, and lines must be complete within two years of annexation

Requests for water and sewer services
Owner of occupied dwelling or operating commercial or industrial property may request water and sewer service, to be provided according to financial polices of the municipality for making such extensions. Request must be made on municipal form at least 30 days before adoption of annexation ordinance

Prepared by Giles S. Perry, Committee Counsel,
Research Division, (919) 733-2578

INVOLUNTARY ANNEXATION PROCEDURE
CURRENT LAW



Prepared by Giles S. Perry,
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APPEALS OF INVOLUNTARY ANNEXATIONS
Current law

Cities of less than 5,000

G.S. 160A-38

Within 30 days following passage of the annexation ordinance, a property owner may petition the Superior Court if the procedural requirements of the annexation statue were not complied with, the prerequisites of G.S. 160A-35 were not met, or if the property annexed does not meet the required characteristics of G.S. 160A-36.

G.S. 160A-37(h)

12-15 months after the effective date of annexation, the property owner may apply for a writ of mandamus in Superior Court if:

- –The city has not provided services as set out in the annexation services plan, or
- –If construction has not begun on major trunk water or sewer outfall lines as set out in the annexation services plan.

Cities of 5,000 or more

G.S. 160A-50

Within 30 days following passage of the annexation ordinance, a property owner may petition the Superior Court if:

- –The procedural requirements of the annexation statute were not complied with,
- –The prerequisites to annex of G.S. 160A-47 were not met,
- –If the property annexed does not meet the required characteristics of G.S. 160A-48

G.S. 160A-49(h)

12-15 months after the effective date of annexation, a property owner who believes that city has not provided services as promised in the annexation services plan may apply for a writ of mandamus in Superior Court.

24-27 months after the effective date of annexation, a property owner may apply for a writ of mandamus in Superior Court if major trunk water and sewer lines have not been completed as set out in the annexation services report.

G.S. 160A-49(k)

24-26 months after the effective date of an annexation, a property owner may petition the Local Government Commission for abatement and rebate of property taxes if a valid request for extension of water and sewer is not complete.

Prepared by Giles S. Perry, Committee Counsel, Research Division, (919) 733-2578

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**

☒ Committee Substitute for
H.B. 1361 A BILL TO BE ENTITLED AN ACT TO REVISE THE MUNICIPAL ANNEXATION LAWS AND TO CHANGE THE CRITERIA TO BE CONSIDERED BY THE JOINT LEGISLATIVE COMMISSION ON MUNICIPAL INCORPORATIONS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 649
Finance Committee Substitute Adopted 5/20/97

Short Title: Lobbyist Penalty. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR LATE FILING OF REPORTS BY LOBBYIST AND PRINCIPAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 2. G.S. 120-47.7(d) reads as rewritten:

"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist's principal who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. This act becomes effective January 1, 1999.

EXPLANATION OF SENATE BILL 649 (2d Ed):
Lobbyist Penalty

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 24, 1998
SPONSOR: Senator Miller

Senate Bill 649 increases the penalty for late filing of lobbying expense reports by lobbyists and lobbyists' principals for reports filed more than 30 days late. The current law only requires an additional $10 late filing fee. The bill is a recommendation of the Secretary of State's office and passed the Senate during the Long Session. The bill has been given a favorable report by the House Committee on Ethics.

Section 1 of the bill amends the penalties applicable to lobbyists who fail to file their required lobbying expense reports on time. Under this section a lobbyist would be required to pay $10 for a report which is less than 30 days late. After 30 days, the penalty increases to $50 per day up to a maximum of $1,000. An appeal process to seek a waiver of the penalty is provided, where excusable neglect, unavoidable delay, or impossibility of performance can be shown as good cause justifying the delay. This appeal is made to the Secretary of State.

Section 2 amends the penalties applicable to lobbyist's principals who fail to file their required lobbying expense reports on time in the same manners as is being amended for lobbyists. A principal means the entity in whose behalf the lobbyist influences or attempts to influence legislative action.

Current law requires a lobbyist and a lobbyist's principal to file an expense report with the Secretary of State within 60 days after the last day of the regular session. The report must include all expenditures made between January 1 and the last day of the regular session. The report must also show the date of each expenditure, to whom paid, the name of any legislator benefitting from the expenditure and the amount of each expenditure made in connection with lobbying in the categories of transportation, lodging, entertainment, food, any item having a cash equivalent value of more than $25 and contributions made or promised. If more than 10 legislators benefitted or were invited to benefit from an expenditure, the lobbyist is only required to report the number of legislators or, with particularity, the basis for their selection.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 649
Finance Committee Substitute Adopted 5/20/97

Short Title: Lobbyist Penalty. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR LATE FILING OF REPORTS BY LOBBYIST AND PRINCIPAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 2. G.S. 120-47.7(d) reads as rewritten:

"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist's principal who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. This act becomes effective January 1, 1999.

EXPLANATION OF SENATE BILL 649 (2d Ed):
Lobbyist Penalty

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 24, 1998
SPONSOR: Senator Miller

Senate Bill 649 increases the penalty for late filing of lobbying expense reports by lobbyists and lobbyists' principals for reports filed more than 30 days late. The current law only requires an additional $10 late filing fee. The bill is a recommendation of the Secretary of State's office and passed the Senate during the Long Session. The bill has been given a favorable report by the House Committee on Ethics.

Section 1 of the bill amends the penalties applicable to lobbyists who fail to file their required lobbying expense reports on time. Under this section a lobbyist would be required to pay $10 for a report which is less than 30 days late. After 30 days, the penalty increases to $50 per day up to a maximum of $1,000. An appeal process to seek a waiver of the penalty is provided, where excusable neglect, unavoidable delay, or impossibility of performance can be shown as good cause justifying the delay. This appeal is made to the Secretary of State.

Section 2 amends the penalties applicable to lobbyist's principals who fail to file their required lobbying expense reports on time in the same manners as is being amended for lobbyists. A principal means the entity in whose behalf the lobbyist influences or attempts to influence legislative action.

Current law requires a lobbyist and a lobbyist's principal to file an expense report with the Secretary of State within 60 days after the last day of the regular session. The report must include all expenditures made between January 1 and the last day of the regular session. The report must also show the date of each expenditure, to whom paid, the name of any legislator benefitting from the expenditure and the amount of each expenditure made in connection with lobbying in the categories of transportation, lodging, entertainment, food, any item having a cash equivalent value of more than $25 and contributions made or promised. If more than 10 legislators benefitted or were invited to benefit from an expenditure, the lobbyist is only required to report the number of legislators or, with particularity, the basis for their selection.

VISITOR REGISTRATION SHEET

Name of Committee: House Finance

Date: July 2, 98

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Hamelon	Hamelon Connelly
Sam Johnson	Atty
Doug Miskew	IBM
Leslie Bellacqua	NCCBI
Phil Kirk	NCCBI
Jim Fyler	NCAFI
Steve Woodson	NC Farm Bureau
Jim Blackburn	NC Association of County Commissioners
Andy Romanet	N.C.L.M.
Bill Scoggin	NC Bar Assoc
Cam Cole	BPMHL
Ruth Strunk	PPAPO

VISITOR REGISTRATION SHEET

House Finance — June 2, 98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Natalie Haskins	Charlotte Chamber
Alice Barlana	Electricities
Laura L. Robin	NCBTN
Elaine Marshall	SOS
A.B. Swindell	BFI
DAN GERLACH	NCBTC
Paul Zepin	OSBM
Greg Rabford	NCDOR
Bernard Allen	SOS
Craig Ahrin	GNAAC
PG	NCPB
John Bowdish	Zeb Alley P.A.

VISITOR REGISTRATION SHEET

House Finance — June 2, 95

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mark Beason	Capitol Group

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, JULY 1, 1998

8:30 A.M. AND AFTER SESSION

ROOM 544-LOB

Rep. Gray called the meeting to order and introduced the Pages and Sgt.-at-Arms staff. A silent roll was taken, (roll list denotes members present).

SB-1569 ECONOMIC OPPORTUNITY ACT OF 1998

Rep. Brawley moved for adoption of the Proposed Committee Substitute for discussion. So moved. Sen. Hoyle explained the bill. Rep. Berry commented about the bill and asked Mr. David Crotts, Fiscal Research Division, about the fiscal note. After his explanation, she requested the bill be displaced due to incomplete fiscal information. Chairman Gray denied the request and explained why. Rep. Berry asked to be recorded as raising an objection. Chairman Gray spoke again. Sen. Hoyle addressed Rep. Berry's comments. Rep. Womble had a series of questions for Sen. Hoyle to which he responded. Rep. Womble was concerned about lay-off policies and minority hiring. Rep. Hackney questioned Sen. Hoyle about paying taxes for the recycling portion of the bill. Sen. Hoyle and Mr. Crotts responded. Rep. Hackney questioned further about who the taxes will be paid to, state, local or federal. Ms. Harris replied. Rep. Hackney asked about being paid to Guilford Co. Sen. Hoyle responded. Chairman Gray read a memo which explained the FedEx property tax. Rep. Starnes asked for a list of cities this will effect in development zones. Sen. Hoyle advised he will provide this list. Rep. Hightower questioned taxing of electricity. Sen. Hoyle and Ms. Harris responded. Rep. Hightower wants to how this will help his towns in his district. Sen. Hoyle advised it would help the entire state. Chairman Gray provided Rep. Hightower with his tiers for his district. Rep. Cunningham had concerns and Sen. Hoyle addressed these. Rep. Jarrell spoke about the bidding process of the bill. She would offer an amendment if necessary for this. Rep. Goodwin commended the work done on this bill, however he requests that the state continue to take care of our rural areas of the state. He will support this bill. Rep. Neely questioned Ms. Harris about constitutionality and the sunsets. She and Sen. Hoyle responded. Rep. Luebke commented on the exemption of taxes. Sen. Hoyle responded to his comments.

Time expired and the chairman announced we would continue discussion 30 minutes after session this afternoon. The meeting adjourned at 9:50 a.m.

Chairman Gray called the meeting back to order at 3:00 p.m. Rep. Jarrell was recognized for the amendment she spoke of in the morning meeting. After it was sent forth, she withdrew it and reserved the right to forward it later if necessary.

Chairman Gray announced the Senate was still in session and a vote would not be taken until the sponsor could return to our meeting. He turned the meeting over to Rep. C. Wilson and he explained the Economic Opportunity Act of 1998 handout. (copy attached).

Rep. Luebke questioned Secretary Rick Carlisle, Department of Commerce and he responded. Rep. Brown questioned Rep. Gray and staff. Rep. Gray and Ms. Harris answered his inquiries. Rep. Decker questioned staff about language for the effective dates. Ms. Harris replied. Rep. Beall questioned the development zones in his district. Rep. Gray answered and Rep. Beall will support the bill. Rep. Berry asked about the unemployment rate for Hertford County and the difference in the House and Senate bills. Rep. Gray and Ms. Harris answered her inquiry. Rep. Berry continued with questions for staff regarding the FedEx hub. Rep. Womble questioned Sec. Carlisle about SB-396 and enterprise zones and incentives for expanding neighborhoods. Sec. Carlisle answered. Rep. Womble also asked about the hiring practice of minorities and females. He thanked Sec. Carlisle for providing the information he had requested and he was pleased to see that citizens of NC were being helped. He will support the bill. Rep. Cunningham spoke on the bill and supports it. Rep. Miller wanted an explanation for tax credits and Ms. Harris answered. Rep. Mercer questioned Sec. Carlisle about lowering the threshold. He responded. Rep. Capps asked if FedEx and NuCor were unionized. Sec. Carlisle will get this information. Rep. Berry questioned the credit caps. Ms. Harris answered. Rep. Berry continued with a series of question to which Ms. Harris and Sec. Carlisle answered.

Rep. Hunter sent forth an amendment and explained. Sen. Hoyle supports the amendment. Rep. Carpenter asked the amendment sponsor a question and he answered. The vote was taken and the amendment was adopted.

Rep. Daughtry moved for a favorable report, unfavorable to the original bill.

Rep. Berry sent forth an amendment and explained. Sen. Hoyle responded to the amendment. Rep. McMahan opposed the amendment. Rep. Hunter also opposed the amendment. Rep. Baddour urged defeat. Rep. Wood also spoke. Sen. Hoyle spoke a second time on the amendment. Rep. Berry spoke a second time on her amendment . She asked that Mr. David Clegg, Employment Security Commission address members. She asked him a series of questions to which he responded. Rep. Berry then called the question. The vote on call the question passed. The vote on the amendment was taken and the amendment was defeated.

Rep. Boyd-McIntyre spoke on the bill regarding the third runway. She had a series of questions to which Sen. Hoyle responded. Sec. Carlisle made additional comments and advised that his Department had no contact with the Airport Authority. Rep. Miller spoke on the bill. Rep. Daughtry called the question. The vote was taken on call the question and passed with an objection from Rep. Berry. The vote was taken to give the bill a favorable report, unfavorable to the original bill and passed.

The meeting adjourned at 5:15 p.m.

Rep. Gray, Chairman

Cindy Brooks

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

WEDNESDAY, JULY 1, 1998

8:30 A.M. & AFTER SESSION

ROOM 544-LOB

CALL TO ORDER

Rep. Gray

BILL FOR DISCUSSION:

SB-1569 Economic Opportunity Act of 1998

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1569*
Finance Committee Substitute Adopted 6/18/98
Finance Committee Substitute #2 Adopted 6/23/98
Proposed House Committee Substitute S1569-PCSX8841-LC

Short Title: Economic Opportunity Act of 1998. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT (1) TO ALLOW CERTAIN RECYCLING FACILITIES AN INVESTMENT TAX CREDIT, A REFUNDABLE INCOME TAX CREDIT, A SALES TAX REDUCTION FOR CRANES AND MATERIALS HANDLING EQUIPMENT, A SALES TAX REFUND FOR CONSTRUCTION MATERIALS, A SALES TAX EXEMPTION FOR ELECTRICITY, AND A PROPERTY TAX EXEMPTION FOR RECYCLING PROPERTY; (2) TO ALLOW AIR COURIERS A SALES TAX REDUCTION FOR MATERIALS HANDLING EQUIPMENT USED AT A HUB, A SALES TAX EXEMPTION FOR AIRCRAFT LUBRICANTS AND PARTS USED AT A HUB, AND A PROPERTY TAX EXEMPTION FOR AIRCRAFT USED AT A HUB; (3) TO EXPAND THE INDUSTRIAL DEVELOPMENT FUND AND UTILITY ACCOUNT TO INCLUDE THE SAME BUSINESSES AS THE WILLIAM S. LEE ACT, TO EXPAND THE UTILITY ACCOUNT TO TIER TWO COUNTIES, TO RAISE THE MAXIMUM GRANT UNDER THE INDUSTRIAL DEVELOPMENT FUND, AND TO ALLOW LOCAL GOVERNMENTS TO USE PART OF THE INDUSTRIAL DEVELOPMENT FUND GRANT FUNDS TO ADMINISTER THE GRANT; (4) TO PROVIDE FOR THE DESIGNATION OF STATE DEVELOPMENT ZONES, TO PROVIDE A LOWER WAGE STANDARD, A HIGHER WORKER TRAINING CREDIT, A ZERO THRESHOLD FOR THE INVESTMENT TAX CREDIT, AND AN

ADDITIONAL JOBS TAX CREDIT WITHIN ZONES, AND TO GIVE ZONES PRIORITY FOR COMMUNITY DEVELOPMENT BLOCK GRANTS; AND (5) TO AMEND THE WILLIAM S. LEE ACT BY EXPANDING THE CENTRAL ADMINISTRATIVE OFFICE CREDIT TO GROSS PREMIUMS TAXES AND TO JOBS CREATED BEFORE THE PROPERTY IS CONSTRUCTED, BY PROVIDING THAT THE INVESTMENT TAX CREDIT THRESHOLD APPLIES ONLY ONCE FOR A TWO-YEAR PROJECT, BY EXPANDING THE INVESTMENT TAX CREDIT TO OPERATING LEASES FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY EXPANDING THE RESEARCH AND DEVELOPMENT TAX CREDIT, BY SIMPLIFYING THE WORKER TRAINING TAX CREDIT, BY IMPOSING A FEE FOR INCENTIVE APPLICANTS, BY EXTENDING THE CREDIT CARRYFORWARD PERIOD FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY CLARIFYING THAT CREDITS ARE ALLOWED FOR BUSINESSES THAT ARE SOLD ONLY IF THERE IS IMMINENT CLOSURE OR AN EMPLOYEE BUYOUT, BY CLARIFYING THE METHOD OF CALCULATING THE INVESTMENT TAX CREDIT FOR LEASES, AND BY CLARIFYING THE DEFINITIONS OF THE TYPES OF BUSINESSES ELIGIBLE FOR INCENTIVES.

The General Assembly of North Carolina enacts:

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I. BILL LEE ACT/DEVELOPMENT ZONES
II. INFRASTRUCTURE FUNDS
III. AIR COURIER HUBS
IV. RECYCLING INDUSTRY
V. EFFECTIVE DATES

PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

The following definitions apply in this Article:

(1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~ A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.

(2) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(3) Cost. -- In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(4) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(5) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(6) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(7) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(8) Reserved.

(9) Large investment. -- Defined in G.S. 105-129.4(b1).

(10) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(11) Manufacturing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(12) Purchase. -- Defined in section 179 of the Code.

(13) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

~~(1a) Central administrative office. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~

~~(1b) Cost. -- Determined pursuant to regulations adopted under section 1012 of the Code.~~

~~(2) Data processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~

~~(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.~~

~~(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.~~

~~(4a) Reserved.~~

~~(5) Machinery and equipment. -- Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.~~

~~(6) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~

~~(7) Purchase. -- Defined in section 179 of the Code.~~

~~(8) Warehousing and distribution. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~

"§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-

numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"§ 105-129.3A. Development zone designation.

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

(1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.

(2) Central administrative office that creates at least 40 new jobs.

(3) Data processing.

(4) ~~Manufacturing or processing.~~ Manufacturing.

(5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central administrative office,~~ if the taxpayer hires at least 40 additional full-time employees to fill new positions at the ~~office.~~ office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during

completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding~~

~~Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

"**§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.**

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the~~ a credit with respect to a large investment may be carried forward for the succeeding ~~five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"**§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.**

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars

($75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.

(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.

(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located.~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees

the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"**§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.**

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the

cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service

within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section ~~41~~ 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for~~ the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is

in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment

of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"§ 143B-437.04. ~~Economic~~ Community development block grants.

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants ~~for economic development that will ensure that no~~ to ensure that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. ~~105-129.3 and, to~~ 105-129.3.

(2) To the extent practicable, ~~that~~ priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. ~~105-129.3.~~ 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"§ 143B-437.01. Industrial Development Fund.

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating

jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing,~~ eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing,~~ eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations.~~ eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) per new job created up to a maximum of ~~four hundred thousand dollars ($400,000)~~ five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(a1) Definitions. -- The following definitions apply in this section:

(1) Air courier services. -- A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages, except by the United States Postal Service.

(2) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(3) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(4) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(5) Eligible industry. -- A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(6) Reserved.

(7) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(8) Manufacturing. -- Defined in the North American Industry Classification System adopted by the United States Office of Budget and Management.

(9) Reserved.

(10) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

~~(1) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.~~

~~(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.~~

~~(3) Manufacturing and processing. Manufacturing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly

related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(6a) Interstate air courier. -- A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.

(6b) Hub. -- An interstate air courier's airport in this State that meets all of the following conditions:

a. The air courier has allocated to the airport under G.S. 105-388 more than sixty percent (60%) of its aircraft value apportioned to this State.

b. The air courier's primary function at the airport is to sort and distribute letters and packages received from multiple consolidation locations.

c. The air courier's primary function at the airport is not to consolidate letters and packages and deliver them to another airport for sorting and distribution."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"k. Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Sales of the following items to an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

"(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms 'interstate air courier' and 'hub' have the meanings provided in G.S. 105-164.3."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. RECYCLING INDUSTRY

Section 12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Tax Incentives for Recycling Facilities.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

(1) Reserved.

(2) Reserved.

(3) Large recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(b).

(4) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(5) Major recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(a).

(6) Owner. -- A person who owns or leases a recycling facility.

(7) Post-consumer waste material. -- Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling facility either directly or indirectly, such as through a broker or an agent.

(8) Purchase. -- Defined in section 179 of the Code.

(9) Recycling facility. -- A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%)

post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land in the same county and reasonably near the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.

"**§ 105-129.26. Qualification; forfeiture.**

(a) Major Recycling Facility. -- A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(b) Large Recycling Facility. -- A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(c) Forfeiture. -- If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal

to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. -- To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Reports. -- The Department of Commerce shall report to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of reinvestment credit refunded to each major recycling facility under G.S. 105-129.28.

"§ 105-129.27. Credit for investing in large or major recycling facility.

(a) Credit. -- An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. -- The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. -- The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. -- The sale, merger, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this

section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. -- If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. -- A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

"**§ 105-129.28. Credit for reinvestment.**

(a) Credit. -- A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. -- The credit allowed to a major recycling facility under this section for the taxable year may not exceed the applicable annual cap provided in the following table:

Taxable Year	Cap
1998	$ 150,000
1999	$ 640,000
2000	$ 3,860,000
2001	$ 8,050,000
2002	$ 9,550,000
2003	$10,100,000
2004-2007	$10,400,000

(c) Reduction. -- For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed by this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. -- For the first ten taxable years after the owner begins construction of the major recycling facility, the owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated

with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

Expenses incurred for the purposes allowed in this subsection during a taxable year in the ten-year period may be counted toward a credit allowed in a later taxable year in the ten-year period. If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and the credit allowed the owner under this section for the following taxable year shall be reduced by that amount in accordance with subsection (c) of this section.

After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b) and adding a new subdivision to read:

"(8) Major recycling facility. -- Defined in G.S. 105-129.25."

Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment."

Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to read:

"(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility."

Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

"(g) Major Recycling Facilities. -- The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred."

Section 17. G.S. 105-164.14(f) reads as rewritten:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund."

Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to read:

"d. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the

Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as a purpose recycling or resource recovering of or from solid waste."

Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed effective for taxable years beginning on or after January 1, 2008. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S. 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its repeal.

The sole purpose of this ten-year sunset provision is to allow a determination to be made whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships to transport materials and products to and from the facility. It is the expectation and intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is determined that, based on audited documentation submitted by a major recycling facility and verified by the Secretary of Commerce, that any major recycling facility continues to experience these additional transportation and transloading expenses as of 2008.

PART V. EFFECTIVE DATES

Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 21. Part II of this act becomes effective July 1, 1998.

Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 23. Section 12 of this act is effective for taxable years beginning on or after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998, and apply to sales made on or after that date. Section 18 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 1569*
Finance Committee Substitute Adopted 6/18/98
Finance Committee Substitute #2 Adopted 6/23/98

Short Title: Economic Opportunity Act of 1998. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT (1) TO ALLOW CERTAIN RECYCLING FACILITIES AN INVESTMENT TAX CREDIT, A REFUNDABLE INCOME TAX CREDIT, A SALES TAX REDUCTION FOR CRANES AND MATERIALS HANDLING EQUIPMENT, A SALES TAX REFUND FOR CONSTRUCTION MATERIALS, A SALES TAX EXEMPTION FOR ELECTRICITY, AND A PROPERTY TAX EXEMPTION FOR RECYCLING PROPERTY; (2) TO ALLOW AIR COURIERS A SALES TAX REDUCTION FOR MATERIALS HANDLING EQUIPMENT USED AT A HUB, A SALES TAX EXEMPTION FOR AIRCRAFT LUBRICANTS AND PARTS USED AT A HUB, AND A PROPERTY TAX EXEMPTION FOR AIRCRAFT USED AT A HUB; (3) TO EXPAND THE INDUSTRIAL DEVELOPMENT FUND AND UTILITY ACCOUNT TO INCLUDE THE SAME BUSINESSES AS THE WILLIAM S. LEE ACT, TO EXPAND THE UTILITY ACCOUNT TO TIER TWO COUNTIES, TO RAISE THE MAXIMUM GRANT UNDER THE INDUSTRIAL DEVELOPMENT FUND, AND TO ALLOW LOCAL GOVERNMENTS TO USE PART OF THE INDUSTRIAL DEVELOPMENT FUND GRANT FUNDS TO ADMINISTER THE GRANT; (4) TO PROVIDE FOR THE DESIGNATION OF STATE DEVELOPMENT ZONES, TO PROVIDE A LOWER WAGE STANDARD, A HIGHER WORKER TRAINING CREDIT, A ZERO THRESHOLD FOR THE INVESTMENT TAX CREDIT, AND AN ADDITIONAL JOBS TAX CREDIT WITHIN ZONES, AND TO GIVE ZONES

PRIORITY FOR COMMUNITY DEVELOPMENT BLOCK GRANTS; AND (5) TO AMEND THE WILLIAM S. LEE ACT BY EXPANDING THE CENTRAL ADMINISTRATIVE OFFICE CREDIT TO GROSS PREMIUMS TAXES AND TO JOBS CREATED BEFORE THE PROPERTY IS CONSTRUCTED, BY PROVIDING THAT THE INVESTMENT TAX CREDIT THRESHOLD APPLIES ONLY ONCE FOR A TWO-YEAR PROJECT, BY EXPANDING THE INVESTMENT TAX CREDIT TO OPERATING LEASES FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY EXPANDING THE RESEARCH AND DEVELOPMENT TAX CREDIT, BY SIMPLIFYING THE WORKER TRAINING TAX CREDIT, BY IMPOSING A FEE FOR INCENTIVE APPLICANTS, BY EXTENDING THE CREDIT CARRYFORWARD PERIOD FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY CLARIFYING THAT CREDITS ARE ALLOWED FOR BUSINESSES THAT ARE SOLD ONLY IF THERE IS IMMINENT CLOSURE OR AN EMPLOYEE BUYOUT, BY CLARIFYING THE METHOD OF CALCULATING THE INVESTMENT TAX CREDIT FOR LEASES, AND BY CLARIFYING THE DEFINITIONS OF THE TYPES OF BUSINESSES ELIGIBLE FOR INCENTIVES.

The General Assembly of North Carolina enacts:

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PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

The following definitions apply in this Article:

(1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~ A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(2) Data processing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(2a) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(4a) Reserved.

(4b) Large investment. -- Defined in G.S. 105-129.4(b1).

(5) Machinery and equipment. -- Engines, machinery, tools, and implements ~~that are capitalized by the taxpayer for tax purposes under the Code and are~~ used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and ~~distribution. -- Defined in the Standard Industrial Classification Manual issued~~ wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

"**§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"**§ 105-129.3A. Development zone designation.**

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts and census block groups in the most recent federal decennial census that meets all of the following conditions:

(1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For

all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) ~~Manufacturing or processing.~~ Manufacturing.
(5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central administrative office,~~ if the taxpayer hires at least 40 additional full-time employees to fill new positions at the ~~office.~~ office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county

income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce

under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the~~ a credit with respect to a large investment may be carried forward for the succeeding ~~five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the

credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located.~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-

year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"**§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.**

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may,

however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section ~~41~~ 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of

this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for~~ the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year

in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. ~~Economic~~ Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants ~~for economic development that will ensure that no~~ to ensure that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. ~~105-129.3 and, to~~ 105-129.3.

(2) To the extent practicable, ~~that~~ priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. ~~105-129.3.~~ 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing,~~ eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing,~~ eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations.~~ eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) per new job created

up to a maximum of ~~four hundred thousand dollars ($400,000)~~ five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(a1) Definitions. -- The following definitions apply in this section:

(1) Air courier services. -- A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1c) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(1d) Eligible industry. -- A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(3) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ North American Industry Classification System adopted by the United States Office of Budget and Management.

(4) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ eligible industries. The Department of Commerce shall adopt rules providing for the administration of the

program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(6a) Interstate air courier. -- A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.

(6b) Hub. -- The airport in this State (i) to which an air courier has allocated under G.S. 105-388 more than sixty percent (60%) of its aircraft value apportioned to this State and (ii) at which the air courier receives packages from consolidation locations for intrastate and interstate sorting and distribution."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or

handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Sales of the following items to an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

"(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms 'interstate air courier' and 'hub' have the meanings provided in G.S. 105-164.3."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. RECYCLING INDUSTRY

Section 12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Tax Incentives for Recycling Facilities.

"§ 105-129.25. Definitions.

The following definitions apply in this Article:

(1) Reserved.

(2) Reserved.

(3) Large recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(b).

(4) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(5) Major recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(a).

(6) Owner. -- A person who owns or leases a recycling facility.

(7) Post-consumer waste material. -- Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling

facility either directly or indirectly, such as through a broker or an agent.

(8) Purchase. -- Defined in section 179 of the Code.

(9) Recycling facility. -- A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land in the same county and reasonably near the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.

"**§ 105-129.26. Qualification; forfeiture.**

(a) Major Recycling Facility. -- A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(b) Large Recycling Facility. -- A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(c) Forfeiture. -- If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling

facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. -- To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Reports. -- The Department of Commerce shall report to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of reinvestment credit refunded to each major recycling facility under G.S. 105-129.28.

"§ 105-129.27. Credit for investing in large or major recycling facility.

(a) Credit. -- An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. -- The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. -- The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf

of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. -- The sale, merger, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. -- If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. -- A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

"**§ 105-129.28. Credit for reinvestment.**

(a) Credit. -- A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. -- The credit allowed to a major recycling facility under this section for the taxable year may not exceed the applicable annual cap provided in the following table:

Taxable Year	Cap
1998	$ 150,000
1999	$ 640,000
2000	$ 3,860,000
2001	$ 8,050,000
2002	$ 9,550,000
2003	$10,100,000
2004-2007	$10,400,000

(c) Reduction. -- For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed by

this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. -- For the first ten taxable years after the owner begins construction of the major recycling facility, the owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

Expenses incurred for the purposes allowed in this subsection during a taxable year in the ten-year period may be counted toward a credit allowed in a later taxable year in the ten-year period. If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and the credit allowed the owner under this section for the following taxable year shall be reduced by that amount in accordance with subsection (c) of this section.

After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b) and adding a new subdivision to read:

"(8) Major recycling facility. -- Defined in G.S. 105-129.25."

Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment."

Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to read:

"(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility."

Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

"(g) Major Recycling Facilities. -- The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred."

Section 17. G.S. 105-164.14(f) reads as rewritten:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund."

Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to read:

"d. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as a purpose recycling or resource recovering of or from solid waste."

Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed effective for taxable years beginning on or after January 1, 2008. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S. 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its repeal.

The sole purpose of this ten-year sunset provision is to allow a determination to be made whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships to transport materials and products to and from the facility. It is the expectation and intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is determined that, based on audited documentation submitted by a major recycling facility and verified by the Secretary of Commerce, that any major recycling facility continues to experience these additional transportation and transloading expenses as of 2008.

PART V. EFFECTIVE DATES

Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 21. Part II of this act becomes effective July 1, 1998.

Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 23. Section 12 of this act is effective for taxable years beginning on or after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998, and apply to sales made on or after that date. Section 18 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV of this act is effective when it becomes law.

FISCAL IMPACT OF PCS FOR SB 1569 (HB 1688)
ECONOMIC OPPORTUNITY ACT OF 1998
STATE GENERAL FUND ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Extend **Lee Act** targeted investment tax credit to certain operating leases	TY 99	-	-	-1.80	-2.48	-2.96	-2.96	-2.96
Levies $75 application fee for **Lee Act** Credits	TY 99	0.06	0.07	0.07	0.08	0.09	0.09	0.10
Provides **Lee Act** additional tax incentives for establishments located in state development zones	TY 99	-	-	-0.42	-1.27	-2.54	-4.01	-4.01
Lowers sales tax on equipment sold to interstate **air couriers** for handling and storing materials from 4% to 1%, $80 limit	1/1/01	-	-	-	-0.36	-0.36	-0.08	-0.08
Provides sales tax exemption for sales of lubricants, repair parts, and accessories for aircraft assigned to **air courier hub**	1/1/01	-	-	-	-	-	-0.16	-0.16
Provides refundable corporate income tax credit for **major recycling facilities** equal to additional transport expenses	TY 98	-0.15	-0.64	-3.86	-8.05	-9.55	-10.10	-10.40
Lower 4% state sales tax to 1%, $80 limit for cranes, foundations, transportation equipment, and materials handling equipment at **major recycling facility**. Exempts from state sales tax lubricants and other additives for vehicles and machinery used at plant, and other materials and supplies used or consumed in manufacturing process.	9/1/98	-0.27	-0.11	-0.17	-0.19	-0.19	-0.21	-0.22

TY = Tax Year

FISCAL IMPACT OF PCS FOR SB 1569 (HB 1688)
ECONOMIC OPPORTUNITY ACT OF 1998
STATE GENERAL FUND ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Exempts from 2.83% state sales tax electricity used at **major recycling facility.**	9/1/98	-	-	-0.03	-0.07	-0.09	-0.11	-0.12
Provides annual sales tax refund for building materials, supplies, fixtures, and equipment that become part of **major recycling facility**	9/1/98	-1.33	-	-	-	-	-	-
Expands targeted investment tax credit for investment in machinery and equipment at **major recycling facility**	TY 98	-0.53	-0.53	-0.60	-0.60	-0.73	-1.05	-2.43
TOTAL - STATE GENERAL FUND		**-2.22**	**-1.21**	**-6.81**	**-12.97**	**-16.33**	**-18.59**	**-20.28**

TY = Tax Year

FISCAL IMPACT OF PCS FOR SB 1569
ECONOMIC OPPORTUNITY ACT OF 1998
LOCAL GOVERNMENT REVENUE ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Lowers state sales tax on sales handling and storing materials sold to interstate **air couriers** from 4% to 1%, $80 limit	1/1/01	-	-	-	-0.24	-0.24	-	-
Provides sales tax exemption for sales of lubricants, repair parts, and accessories for aircraft assigned to **air courier hub**	1/1/01	-	-	-	-	-	-	-
Allows property tax exemption for aircraft owned by **air courier** and apportioned for property tax purposes to **courier's hub** in the state	TY 01	-	-	-	-0.35	-0.37	-0.39	-0.41
Exempts from local sales tax cranes, foundations, transportation equipment, materials and supplies, lubricants and other additives for vehicles and other machinery used at major recycling facility and other materials and supplies used or consumed in manufacturing process at **major recycling facility**	9/1/98	-0.13	-0.05	-0.09	-0.09	-0.09	-0.11	-0.11
Provides annual sales tax refund for building materials, supplies, fixtures, and equipment that become part of **major recycling facility**	9/1/98	-0.67	-	-	-	-	-	-

TY = Tax Year

NOTE: These estimates are preliminary, based on adjustment of cost estimates supplied by Department of Commerce. Some of the losses are associated with economic activity that has not taken place and has not been built into economic assumptions that are part of State General Fund revenue forecast.

FRD, 6/17/98

EXPLANATION OF SENATE BILL 1569[1]:
Proposed House Committee Substitute
Economic Opportunity Act of 1998

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: June 30, 1998
SPONSOR: Senator Hoyle

This bill is designed to promote economic development throughout the State in five ways:

1. It makes various amendments to the William S. Lee Act to encourage large investments and remove technical problems with the Act.
2. It authorizes enhanced incentives for development zones, which are economically distressed areas located within municipalities.
3. It expands and modifies the Industrial Development Fund to provide financial support for projects in rural and less prosperous areas of the State.
4. To encourage development of air courier hubs, it provides sales tax and property tax reductions for air couriers and provides a temporary bidding law exemption for specific projects of the Piedmont Triad International Airport Authority.
5. To encourage development of the recycling industry in Tier One counties, it provides an investment tax credit for large and major recycling facilities that locate in Tier One counties and, in addition, it provides a refundable reinvestment credit and sales tax reductions for major recycling facilities.

William S. Lee Act Modifications. Part I of the bill makes a number of changes to the William S. Lee Quality Jobs and Business Expansion Act, some technical and some substantive. Unless a different date is given, these changes all become effective beginning with the 1999 tax year.

Part I makes two changes to the central administrative office credit that was enacted last year. First, it allows the credit to be taken against the insurance gross premiums tax. This change will permit insurance companies to qualify for the credit. Second, it clarifies that a central administrative office meets the requirement for creating new jobs if the jobs begin before the office property is in

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[1] The House companion to this bill is House Bill 1688, introduced by Representative Gray.

service but are located at a temporary facility that the business occupies while waiting for its office property to be completed.

Part I also makes two changes to the credit for investing in machinery and equipment. First, it provides that for projects that span two tax years, the threshold applies only once to the investment. Otherwise, a project put in service from May through September would receive more benefit than a project put in service from November through March. This change goes into effect beginning with the 1998 tax year. Second, it expands the credit to include machinery and equipment the taxpayer uses under an operating lease, but only if the machinery and equipment are part of a project valued at $150 million or more. Otherwise, the current law allows the credit only for machinery and equipment the taxpayer acquires under a capital lease or purchases and capitalizes.

Part I expands the credit for research and development. The existing credit for research and development piggybacks the federal credit, allowing a State credit equal to approximately ¼ of the federal credit as it relates to North Carolina activities. In 1997, Congress enacted an alternative credit for research and development. The bill modifies the State credit to also allow a credit equal to approximately ¼ of the federal alternative credit as it relates to North Carolina activities.

Part I simplifies the credit for worker training. In order to qualify under current law for the credit for worker training, the taxpayer must get its planned training certified in advance by the Department of Community Colleges. This requirement has been difficult both for taxpayers and for the Department of Community Colleges. The bill replaces the current credit measured by costs of training with a credit for wages paid to workers while they are being trained (not including on-the-job training). The credit is restricted to employees for whom the taxpayer qualifies for the jobs tax credit and employees being trained to operate machinery and equipment for which the taxpayer qualifies for the credit for investing in machinery and equipment.

Finally, Part I makes a number of administrative and technical changes to the William S. Lee Act. First, it levies a $75.00 application fee on taxpayers who seek to qualify for a credit. The proceeds of the fee will help the Department of Commerce defray its costs in administering the credits. Most states with similar incentives laws require a fee, and their fees tend to be much higher. The application fee would become effective January 1, 1999. Second, the bill extends the credit carryforward period for investments over $150 million. Currently, the credit may not reduce the taxpayer's tax liability by more than half, and any excess may be carried forward for up to five years. The bill provides that for large investments, the excess may be carried forward for up to 20 years. Third, the bill clarifies that credits are allowed only for new and expanding businesses,

not for existing businesses that are sold to another taxpayer. The bill provides an exception, however, for a business that has closed, has filed a federally required notice that closure is imminent, or has been purchased in an employee buyout. In these cases, the business will be able to qualify for the credits to the same extent as a new business. Fourth, the bill clarifies and renumbers the definitions of the different types of businesses that are eligible for credits[2] and clarifies the method of calculating the investment tax credit and the business tax credit for property acquired by a capital lease.

State Development Zones. Part I of the bill provides for the designation of economically distressed areas located within municipalities as State development zones, and authorizes enhanced incentives for businesses that locate in a development zone. This change becomes effective beginning with the 1999 tax year. The bill defines a development zone as an area (1) consisting of one or more contiguous census tracts, block groups, or both, (2) with a population of 1,000 or more, at least 20% of whom are below the poverty level, and (3) located at least partly in a municipality with a population over 5,000. If a business locates in a development zone, the wage standard it has to meet is the same as for Tier One counties — slightly lower than the standard for other counties. In addition, if a business locates in a development zone, its maximum worker training credit is $1,000 rather than $500, it receives an additional $4,000 per job on its jobs tax credit, and there is no threshold for the credit for investing in machinery and equipment.

The Secretary of Commerce will designate development zones upon request of a taxpayer or a local government. The designation is effective for four years. The bill provides that a development zone may qualify for priority in receiving community development block grants if the municipality's governing body adopts a strategy to improve the zone and establishes a committee to implement the strategy, in accordance with guidelines established by the Department of Commerce.

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[2] The bill changes statutory references from the Standard Industrial Classifications (SIC) to the North American Industrial Classification System (NAICS) to conform to the federal system. These references are used in the William S. Lee act to define various types of businesses. The bill also changes the term "manufacturing and processing" to "manufacturing" and the term "warehousing and distribution" to "warehousing and wholesale trade" to conform to the NAICS. In April 1997, the United States Office of Management and Budget announced the adoption of a new industry classification replacing the SIC, a system used to classify most of the data we have about industries or kinds of business in our economy. The updating of industry classifications is nothing new. Since its origination in the 1930s, the SIC system has been revised or updated every 10 or 15 years to reflect new developments in the American economy and to address problems identified by data users and statistical agencies. It was last revised in 1987.

Infrastructure Funds. Part II of the bill states the intent of the General Assembly to appropriate funds to the Industrial Development Fund and the Utility Account of the Industrial Development Fund. The Governor's budget requested an appropriation of $32 million, $18 million for the Fund and $14 million for the Utility Account. Under current law, money in the Utility Account can be used in Tier One counties for construction or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or for existing, new, or proposed industrial buildings to be used in manufacturing and processing, warehousing and distribution, or data processing. The bill would expand the scope of the Utility Account to include Tier Two counties.

Under current law, the Industrial Development Fund provides funding for manufacturing projects in Tier One, Two, and Three counties as well as in areas experiencing major economic dislocations. The funds may be used for equipment, capital improvements, and utility distribution lines. Projects in Tier Two and Three Counties are required to match the State funds on a $1/$3 basis. The funding is capped at $4,000 per job to be created and $400,000 per project. The bill would raise the per-job cap to $5,000 and the per-project cap to $500,000. The bill would also expand the industries covered by both the Industrial Development Fund and the Utility Account to include all of the following: manufacturing, central administrative offices, air courier services, data processing, and warehousing and wholesale trade.

Under current law, funds in the Industrial Development Fund and the Utility Account are used for grants to local governments and, in some cases, loans to businesses through the local government and a bank that matches the loan. The bill would clarify that a local government that receives funds, may, if necessary, use up to 2% of the funds to verify that the funds are used as required by law and otherwise to administer the grant or loan.

Air Courier Hubs. Part III of the bill provides sales tax and property tax reductions for interstate air couriers in order to encourage the development of air courier hubs in North Carolina. An air courier is an air carrier that delivers individually addressed letters, parcels, and packages. Effective January 1, 2001, the bill provides that sales to an interstate air courier of equipment for handling and storing materials at its hub will be subject to a reduced sales tax of 1%, capped at $80 per item. In addition, the bill provides a sales tax exemption for sales to an interstate air courier of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at the air courier's hub in this State. Effective beginning with the 2001 property tax year, the bill provides a property tax exemption for aircraft owned by an air courier and apportioned for property tax purposes to the courier's hub in this State. A hub is the place in this State where

the air courier allocates for property tax purposes more than 60% of its North Carolina aircraft value and where its primary function is to receive packages from consolidation locations for sorting and distribution, rather than to consolidate packages for delivery to another airport for sorting and distribution.

Part III also grants a bidding law exemption for the Piedmont Triad International Airport Authority. The exemption is effective for a five-year period beginning January 1, 1999, and applies to design and construction of an air freight distribution facility on airport property, and related supplies, equipment, and services.

Recycling Facilities. Part IV of the bill provides tax incentives for "large" and "major" recycling facilities located in Tier One counties at the time of initial construction. A recycling facility is a plant that manufactures products, most of which are made from at least 50% post-consumer waste material. The facility also includes related infrastructure, buildings, and equipment on land near (and in the same county as) the plant. A large recycling facility is one that will involve at least $150 million in new investment and 155 new jobs within a two-year period. A major recycling facility is one that will involve at least $300 million in new investment and 250 new jobs within a four-year period. In order to qualify for the applicable tax incentives, the owner of the facility must obtain certification from the Department of Commerce that it will meet the minimum investment and new job requirements. If the facility fails to meet either requirement within the applicable time period, it forfeits any tax benefit it received as a result of being certified.

Part IV provides an investment tax credit for both large and major recycling facilities, effective beginning with the 1998 tax year. This investment tax credit is in lieu of the investment tax credit provided in the William S. Lee Act. The recycling facility investment tax credit differs from the Bill Lee Act credit in the following ways:

1. The Bill Lee Act credit is equal to 7% of the cost of machinery and equipment, while the large recycling facility credit is equal to 20% of the cost and the major recycling facility credit is equal to 50% of the cost.
2. The credit is allowed at the time the owner of the recycling facility accrues expenses to purchase or lease the machinery and equipment, rather than at the time the machinery and equipment are placed in service, as under the Bill Lee Act. If the recycling facility fails to put the machinery and equipment in service within 30 months after taking the credit, the credit is forfeited and must be repaid.

3. The credit is allowed against both the corporate franchise tax and the corporate income tax. Under the Bill Lee Act, the credit is allowed against either but not both of those taxes.
4. The credit may equal 100% of the tax due from the owner of the facility. Under the Bill Lee Act, the credit is limited to 50% of tax due, so that the taxpayer will be paying some tax in every case.
5. The excess credit may be carried forward for 25 years. Under the Bill Lee Act, as revised by this bill, the relevant carryforward period would be 20 years.

Part IV also provides to major recycling facilities locating in Tier One counties a refundable corporate income tax "credit for reinvestment," effective beginning with the 1998 tax year. The credit applies if the major recycling facility is not accessible by ocean barge or ship and incurs additional expenses due to transporting its materials and products by alternative modes of transportation. The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap is $640,000. In 2004, the cap levels off at $10.4 million a year. The bill sunsets this reinvestment credit effective with the 2008 tax year. The bill states the intent, however, to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

The reinvestment credit is refundable. That means that if the amount of credit exceeds the major recycling facility's tax liability after all other credits are subtracted, the balance is paid out in cash. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling facility. The facility must document its compliance with this reinvestment requirement and forfeits any part of the credit it spends for another purpose. It is this reinvestment requirement that gives the credit its name.

Part IV provides several sales and use tax reductions for major recycling facilities locating in Tier One counties, effective beginning July 1, 1998. First, it provides that a reduced sales tax rate of 1%, capped at $80 per item, will apply to

3. The credit is allowed against both the corporate franchise tax and the corporate income tax. Under the Bill Lee Act, the credit is allowed against either but not both of those taxes.
4. The credit may equal 100% of the tax due from the owner of the facility. Under the Bill Lee Act, the credit is limited to 50% of tax due, so that the taxpayer will be paying some tax in every case.
5. The excess credit may be carried forward for 25 years. Under the Bill Lee Act, as revised by this bill, the relevant carryforward period would be 20 years.

Part IV also provides to major recycling facilities locating in Tier One counties a refundable corporate income tax "credit for reinvestment," effective beginning with the 1998 tax year. The credit applies if the major recycling facility is not accessible by ocean barge or ship and incurs additional expenses due to transporting its materials and products by alternative modes of transportation. The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap is $640,000. In 2004, the cap levels off at $10.4 million a year. The bill sunsets this reinvestment credit effective with the 2008 tax year. The bill states the intent, however, to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

The reinvestment credit is refundable. That means that if the amount of credit exceeds the major recycling facility's tax liability after all other credits are subtracted, the balance is paid out in cash. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling facility. The facility must document its compliance with this reinvestment requirement and forfeits any part of the credit it spends for another purpose. It is this reinvestment requirement that gives the credit its name.

Part IV provides several sales and use tax reductions for major recycling facilities locating in Tier One counties, effective beginning July 1, 1998. First, it provides that a reduced sales tax rate of 1%, capped at $80 per item, will apply to

cranes, foundations, transportation equipment, and materials handling equipment used at the major recycling facility. These items would otherwise be subject to 4% State sales tax and 2% local sales tax. Second, it exempts from sales tax lubricants and other additives for vehicles and machinery used at the plant, and other materials and supplies (not including machinery and equipment) that are used or consumed directly in the manufacturing process. These items would also otherwise be subject to a combined State and local rate of 6%. Third, it exempts from sales tax electricity purchased for use at the major recycling facility. This electricity would otherwise be subject to State sales tax at 3% or 2.83%. Fourth, Part IV provides an annual sales tax refund for taxes a major recycling facility pays directly or indirectly on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility located in a Tier One county.

Finally, Part IV provides for major recycling facilities an expanded version of the existing property tax exemption for property used for recycling, effective beginning with the 1999-20 property tax year. Under current law, to qualify for exemption, the property must be used exclusively for recycling and have recycling as its primary purpose. The bill would provide that, for major recycling facilities only, the property must be used predominantly for recycling and have recycling as a purpose. The Department of Environment and Natural Resources determined that these changes would be necessary to prevent a major recycling facility from being disqualified because it adds fillers or other materials to the post-consumer waste material when manufacturing products.

Municipalities with Potential State Development Zones

Albermarle	Asheboro	Asheville (2)	Boone
Brevard	Carrboro	Chapel Hill	Charlotte (2)
Clinton	Concord	Dunn	Durham (3)
Edenton	Elizabeth City	Fayetteville	Forest City
Gastonia	Goldsboro	Greenville	Hamlet
Henderson	Hendersonville	Hickory	High Point (2)
Jacksonville (2)	Kinston	Laurinburg	Lenoir
Lexington	Lumberton	New Bern	Oxford
Raleigh (2)	Reidsville	Roanoke Rapids	Rockingham
Rocky Mount	Roxboro	Salisbury	Sanford
Shelby	Smithfield	Southern Pines	Spring Lake
Statesville	Washington	Waynesville	Whiteville
Williamston	Wilmington (3)	Wilson	Winston-Salem

Tax Credit Incentives

- $4,000 credit for creating jobs in zone, in addition to basic William S. Lee Act job credits
- 7% credit for investing in machinery and equipment (with no threshold requirement)
- $1,000 worker training credit

JOB CREATION "SPINOFF" EFFECT

If North Carolina recruits a company to move to the state creating 100 new jobs ...

An average of 142 people will move with it.

They will buy 57 homes resulting in:
$6.5 million in home sales
$216,000 in new property taxes
$414,000 in mortgage interest fees

To service the needs of these new residents, 64 additional jobs will be created:
45 wholesale, retail, entertainment
7 transportation
3 finance, insurance, real estate
3 service
3 construction
3 public administration

7 new retail stores will be needed to fill the new residents' needs.

In all, the new residents will generate:
$2.4 million in retail sales
$411,000 automobile sales
$97,000 furniture sales
$557,000 grocery sales
$242,000 gasoline sales
$42,000 child care revenues
$218,000 restaurant sales
$65,000 doctor/dental fees
$121,000 state/county sales tax
$121,000 building materials sales
$72,000 pharmaceutical sales

Source: Charlotte Chamber of Commerce

Berry #1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1569-ALCX-7/1B

Date_____, 199

Comm. Sub. [YES]
Amends Title [YES]
PCSX8841

Rep. Berry

moves to amend the bill on page 2, line 3,
by adding the following after the word "BY": "LIMITING THE JOBS TAX CREDIT TO JOBS LISTED WITH THE EMPLOYMENT SECURITY COMMISSION, BY";

and on page 12, lines 6 - 7,
by adding the following between the lines:
"(f) Labor Exchange. -- Notwithstanding the provisions of this section, a taxpayer is not eligible for the credit for creating jobs except for those new jobs the taxpayer lists with the employment service of the Employment Security Commission and for which the taxpayer allows the Commission to accept and screen applications and refer applicants to the taxpayer. The General Assembly finds that the purpose of these conditions is to enhance full and fair equal employment opportunities for those who use State employment offices and to promote interstate commerce by encouraging greater effective use of the national public labor exchange.

The employer shall track new jobs created by position number and shall maintain records provided annually by the Employment Security Commission demonstrating that those positions were listed with its employment service. These records must document that each new position was listed for initial hiring and for any replacement hiring that occurred during the four-year period during which the taxpayer was eligible to take an installment of the credit with respect to that position. The employer must maintain these records until the close of the limitations period under G.S. 105-241.1 for assessments relating to the credit for that position.";

and on page 24, line 27,
by adding the following after the phrase "20.": "G.S. 105-129.4(b2),

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1569-ALCX-7/1B Page 2 of __

as enacted by Section 1 of this act, becomes effective for jobs created on or after January 1, 1999."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1569

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1569-ALC-6/17B

Date_____, 199__

Comm. Sub. [YES]
Amends Title [YES]
PCSX8841

Rep. R. Hunter

moves to amend the bill on page 2, line 13,
by adding the following at the end of the line "PROVIDING FOR A SINGLE TIER DESIGNATION FOR TWO-COUNTY INDUSTRIAL PARKS, BY";

and on page 5, lines 2 - 3,
by adding the following between the lines:
"(d) Exception for Two-County Industrial Park. -- For the purpose of this Article, an eligible two-county industrial park that meets all of the following conditions has the lower enterprise tier designation of the designations of the two counties in which it is located:

(1) It is located in two contiguous counties, one of which has a lower enterprise tier designation than the other.
(2) At least one-third of the park is located in the county with the lower tier designation.
(3) It is owned by the two counties or a joint agency of the counties.
(4) The county with the lower tier designation contributed at least one-half of the cost of developing the park."

SIGNED R. Hunter
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen) Withdrawn

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Jarrell
Sen.)

moves to amend the bill on page 8, lines 10-17

( ) WHICH CHANGES THE TITLE

by deleting Section 11 of the bill;

and on page 24, lines 35-36,

by deleting the sentence that begins on ~~page~~ line 35 and ends on line 36.

SIGNED Mary Jarrell

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

nucor corporation
2100 Rexford Road Charlotte, North Carolina 28211 Telephone 704/366-7000 Facsimile 704/362-4208
Executive Offices

June 30, 1998

The Honorable Lyons Gray
North Carolina House of Representatives
Legislative Office Building, Room 532
Raleigh, North Carolina 27601-1096

Re: Senate Bill 1569 - Economic Opportunity Act of 1998

Dear Representative Gray:

During the debate over passage of Senate Bill 1569 in the North Carolina Senate last week, a question was raised regarding the availability to North Carolinians of the new jobs created in facilities receiving state incentives under the bill. Nucor Corporation intends to list all jobs available at the Hertford County plant with the North Carolina Employment Security Commission and intends to utilize local community colleges for testing job applicants. We will give priority to North Carolinians from Hertford County as well as surrounding North Carolina counties in filling the new jobs at the Nucor Hertford County mill.

We look forward to the day when the Nucor Steel Hertford County mill is at production capacity. If we can answer any other questions you have regarding the mill, please do not hesitate to contact us.

Sincerely,

John D. Correnti
Vice Chairman, President,
Chief Executive Officer

cc: Speaker Harold J. Brubaker
President Pro Tempore Marc Basnight
Senator David W. Hoyle

COUNTY RANKINGS FOR DECEMBER, 1997
USING 1990 AND 1996 POPULATION

TIER	COUNTY	POPULATION GROWTH 1990-1996 % CHANGE	RANK	PER CAPITA INCOME 3 yr avg. 1993-1995 INCOME	RANK	UNEMPLOYMENT -36 MTH AVG JULY '94-JUN '97 RATE	RANK	DISTRESSED COUNTY SUM 1996-1997	DISTRESSED COUNTY RANK 1996-1997	DISTRESSED COUNTY RANK 1995-1996
xx	STATEWIDE	10.401%	XXX	$20,057	XXX	4.230%	XXX	XXX	XXX	XXX
1	TYRRELL	-2.697%	99	$14,342	93	9.097%	95	287	1	13
1	SWAIN	3.497%	79	$12,898	99	16.151%	100	278	2	1
1	HYDE	-5.581%	100	$15,638	79	9.161%	96	275	3	11
1	RICHMOND	2.473%	87	$15,160	84	9.380%	97	268	4	2
1	EDGECOMBE	0.039%	94	$16,046	74	9.499%	98	266	5	7
1	NORTHAMPTON	-0.404%	96	$15,136	85	7.470%	84	265	6	4
1	GRAHAM	5.003%	67	$13,146	98	12.111%	99	264	7	3
1	BERTIE	1.535%	90	$14,873	88	6.494%	77	255	8	12
1	HERTFORD	-0.710%	97	$14,458	92	5.731%	66	255	8	9
1	WASHINGTON	-2.300%	98	$16,160	70	7.891%	87	255	8	14
1	HALIFAX	3.934%	74	$15,085	86	8.493%	93	253	11	5
1	WARREN	6.174%	60	$13,355	97	8.132%	89	246	13	5
1	MITCHELL	2.986%	85	$15,815	75	6.563%	79	239	14	14
1	ANSON	1.329%	91	$16,734	57	8.007%	88	236	17	9
1	ALLEGHANY	-0.365%	95	$17,012	52	6.607%	80	227	20	8
2	MARTIN	3.258%	81	$15,675	78	8.201%	90	249	12	22
2	ASHE	4.309%	72	$16,064	73	8.663%	94	239	14	18
2	ROBESON	6.393%	56	$14,594	91	8.410%	92	239	14	16
2	BEAUFORT	3.221%	82	$16,325	64	7.454%	83	229	18	19
2	MONTGOMERY	3.160%	83	$16,087	72	6.325%	74	229	18	17
2	SCOTLAND	3.415%	80	$16,413	63	6.949%	82	225	21	21
2	VANCE	3.613%	78	$16,528	59	7.866%	86	223	22	20
2	PERQUIMANS	2.575%	86	$14,713	89	4.737%	47	222	23	29
2	ONSLOW	0.585%	93	$14,123	95	3.960%	33	221	24	23
2	YANCEY	5.571%	63	$14,310	94	5.603%	62	219	25	25
2	BLADEN	4.884%	69	$16,169	69	6.498%	78	216	26	24
2	COLUMBUS	3.971%	73	$16,586	58	6.751%	81	212	27	26
2	CHEROKEE	10.278%	29	$13,784	96	6.388%	75	200	28	28
2	CLAY	9.881%	33	$14,700	90	6.443%	76	199	29	31
2	CASWELL	2.987%	84	$15,016	87	3.678%	27	198	30	35
3	PAMLICO	5.313%	64	$15,792	76	5.134%	55	195	31	33
3	RUTHERFORD	4.498%	71	$16,856	54	5.879%	70	195	31	30
3	WILSON	3.818%	76	$19,256	22	8.304%	91	189	33	35
3	MCDOWELL	5.647%	62	$16,509	60	5.705%	64	186	34	27
3	STANLY	4.899%	68	$17,210	49	5.780%	68	185	35	33
3	JACKSON	9.022%	39	$15,602	80	5.727%	65	184	36	37
3	LENOIR	3.827%	75	$17,998	37	6.079%	72	184	36	40
3	CHOWAN	4.694%	70	$16,996	53	5.379%	59	182	38	39
3	MADISON	6.294%	59	$15,275	83	4.312%	39	181	39	32
3	AVERY	2.273%	88	$18,372	32	5.325%	58	178	40	37
3	PASQUOTANK	7.039%	54	$16,124	71	5.004%	53	178	40	44
3	HOKE	24.807%	2	$12,162	100	6.126%	73	175	42	43
3	CLEVELAND	6.304%	58	$17,755	43	5.953%	71	172	43	42
3	ROCKINGHAM	3.812%	77	$17,811	41	4.824%	50	168	44	48
3	GATES	5.696%	61	$15,307	82	3.400%	21	164	45	53
3	WAYNE	7.323%	51	$16,272	67	4.706%	46	164	45	40
3	JONES	1.115%	92	$18,784	27	4.498%	43	162	47	52
3	PERSON	8.045%	48	$17,179	50	5.429%	60	158	48	51
3	BRUNSWICK	23.075%	4	$16,215	68	7.651%	85	157	49	45
3	HAYWOOD	7.458%	50	$17,426	47	5.188%	56	153	50	50
3	GASTON	2.242%	89	$19,327	21	4.382%	40	150	51	47
3	WILKES	5.127%	66	$17,972	38	4.687%	45	149	52	46
3	CAMDEN	9.163%	38	$15,728	77	3.953%	32	147	53	49
3	CRAVEN	6.342%	57	$18,151	35	4.801%	49	141	54	53
3	GRANVILLE	8.299%	44	$16,315	66	3.953%	31	141	54	55
4	CUMBERLAND	8.772%	41	$17,452	46	4.792%	48	135	56	58
4	CALDWELL	5.132%	65	$17,869	40	3.782%	28	133	57	56
4	SAMPSON	8.203%	46	$19,516	19	5.759%	67	132	58	60
4	PENDER	23.975%	3	$16,445	62	5.589%	61	126	59	58
4	CARTERET	11.434%	26	$17,650	45	5.048%	54	125	60	65
4	SURRY	7.141%	52	$18,466	31	4.440%	41	124	61	56
4	HARNETT	16.414%	12	$15,475	81	3.931%	30	123	62	62
4	DUPLIN	8.546%	42	$19,354	20	5.282%	57	119	63	60
4	GREENE	11.193%	27	$16,793	56	4.002%	34	117	64	64
4	BURKE	9.409%	36	$17,710	44	4.047%	35	115	65	63
4	FRANKLIN	17.002%	9	$16,321	65	4.209%	37	111	66	66
4	NASH	11.621%	25	$18,972	23	5.656%	63	111	66	68
4	MACON	13.864%	17	$16,800	55	4.239%	38	110	68	69
4	DARE	16.574%	10	$18,509	30	5.851%	69	109	69	72
4	PITT	9.952%	31	$18,815	25	4.975%	52	108	70	74
4	WATAUGA	9.891%	32	$16,464	61	2.936%	8	101	71	67
4	LINCOLN	12.844%	21	$18,078	36	4.464%	42	99	72	70
4	TRANSYLVANIA	7.551%	49	$18,732	28	3.378%	18	95	73	71
4	ROWAN	9.427%	35	$18,152	34	3.449%	25	94	74	72
4	ALAMANCE	8.226%	45	$20,089	17	3.595%	26	88	75	79
4	CATAWBA	8.048%	47	$21,723	11	3.920%	29	87	76	76
4	ALEXANDER	11.698%	24	$17,877	39	3.428%	22	85	77	75
4	YADKIN	13.041%	20	$17,779	42	3.384%	19	81	78	78
4	DAVIDSON	9.334%	37	$18,544	29	3.177%	13	79	79	80
4	LEE	13.643%	18	$20,744	15	4.558%	44	77	80	81
5	BUNCOMBE	9.738%	34	$20,720	16	3.439%	24	74	81	86
5	FORSYTH	6.875%	55	$25,084	3	3.324%	16	74	81	85
5	CURRITUCK	18.353%	8	$17,173	51	3.211%	14	73	83	83
5	NEW HANOVER	19.752%	7	$20,815	14	4.911%	51	72	84	88
5	STOKES	13.226%	19	$17,292	48	2.690%	4	71	85	81
5	DURHAM	7.056%	53	$22,607	8	2.944%	9	70	86	86
5	DAVIE	8.414%	43	$22,596	9	3.268%	15	67	87	76
5	RANDOLPH	10.192%	30	$18,798	26	3.047%	10	66	88	84
5	GUILFORD	8.821%	40	$24,181	4	3.386%	20	64	89	89
5	IREDELL	14.012%	16	$19,904	18	3.429%	23	57	90	90
5	MOORE	16.495%	11	$23,530	7	4.174%	36	54	91	91
5	CABARRUS	14.248%	15	$20,947	12	3.350%	17	44	92	92
5	HENDERSON	11.861%	23	$21,837	10	3.076%	11	44	92	92
5	UNION	20.540%	6	$18,312	33	2.735%	5	44	92	94
5	CHATHAM	12.779%	22	$20,891	13	2.776%	6	41	95	97
5	POLK	10.509%	28	$23,569	6	2.581%	3	37	96	95
5	JOHNSTON	21.572%	5	$18,865	24	2.797%	7	36	97	95
5	MECKLENBURG	15.866%	13	$27,004	1	3.118%	12	26	98	98
5	ORANGE	15.068%	14	$23,819	5	1.820%	1	20	99	99
5	WAKE	26.233%	1	$25,665	2	2.329%	2	5	100	100

NOTES:

1. Population growth was determined using years 1990 and 1996 as reported on LINC.
2. Per Capita Income is a three year average from 1993-1995 using BEA data.
3. The Unemployment Rate is the average rate from July 1993 to June 1997, not seasonally adjusted, provided by the Labor Market Information Division of the Employment Security Commission.

ECONOMIC OPPORTUNITY ACT OF 1998

HB 1688/SB 1569

The Act

- ▲ Modifications to the William S. Lee Quality Jobs and Business Expansion Act
- ▲ Creation of State Development Zones
- ▲ Modifications to the Industrial Development Fund statutes
- ▲ Incentives for air courier hubs
- ▲ Incentives for Tier 1 recycling facilities

William S. Lee Quality Jobs and Business Expansion Act Modifications

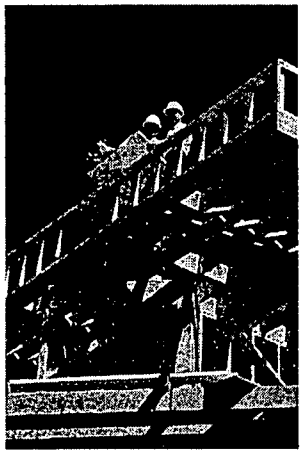
William S. Lee Act Modifications

- Central Administrative Office Tax Credit
  - Revise tax credit to allow companies operating in temporary space while permanent office space is being constructed to be eligible for the credit
  - Extend the application of tax credits to gross premiums tax to remove exclusion of insurance companies

William S. Lee Act Modifications

- Investment Tax Credit
  - Expand eligibility window for credits calculation from 1 to 2 tax years
  - Permit projects with investment in excess of $100 million to include operating leases in application for investment tax credit

William S. Lee Act Modifications



- Worker Training Tax Credit
  - Modify the WTTC to reimburse businesses for wages paid while employees are in training (capped at $500 per job, $1,000 per job in Tier 1)
  - Would not apply for wages related to production

William S. Lee Act Modifications

- Extension of Carryforward
  - Extend credit usage carryforward from 5 to 20 years for projects greater than $150 million
- Institution of Application Fees
  - Establish a $75 application fee for the William S. Lee Act tax credits

William S. Lee Act Modifications

- Permit tax credit eligibility to a company that acquires a North Carolina business in 'imminent threat' of closure or employee buyout
- Track Federal law by establishing alternate incremental credit for research and development

Establishing State Development Zones

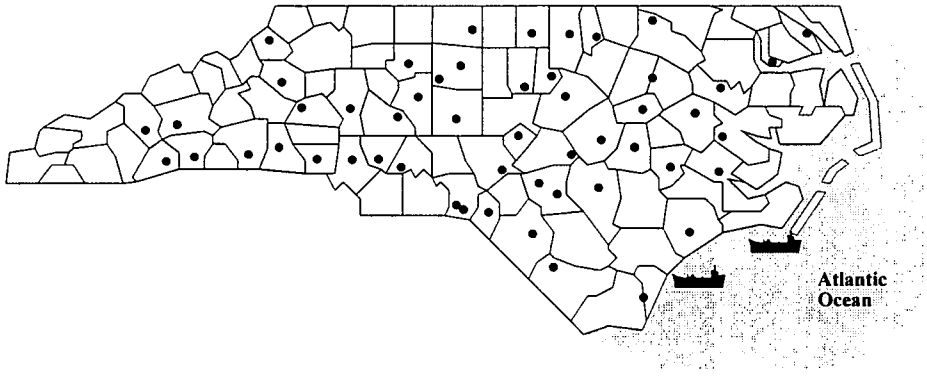
Establishing State Development Zones

- **Purpose:** To bring economic development to 'pockets of poverty' in municipalities throughout the state that have not shared in the economic gains of the state as a whole

Qualifications

- **Income Standard:** over 20% poverty
- **Boundaries:** contiguous census tracts or block groups that meet the income standard; 1,000 population in zone
- **Municipal Status:** zone must be located within a municipality of at least 5,000 population

Potential State Development Zones



Municipalities with Potential State Development Zones

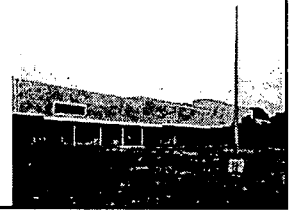
Albermarle	Asheboro	Asheville (2)	Boone
Brevard	Carrboro	Chapel Hill	Charlotte (2)
Clinton	Concord	Dunn	Durham (3)
Edenton	Elizabeth City	Fayetteville	Forest City
Gastonia	Goldsboro	Greenville	Greensboro
Hamlet	Henderson	Hendersonville	Hickory
High Point (2)	Jacksonville (2)	Kinston	Laurinburg
Lenoir	Lexington	Lumberton	New Bern
Oxford	Raleigh (2)	Reidsville	Roanoke Rapids
Rockingham	Rocky Mount	Roxboro	Salisbury
Sanford	Shelby	Smithfield	Southern Pines
Spring Lake	Statesville	Washington	Waynesville
Whiteville	Williamston	Wilmington (3)	Wilson
Winston-Salem			

Tax Credit Incentives

- $4,000 credit for creating jobs in zone, in addition to basic William S. Lee Act job credits
- 7% credit for investing in machinery and equipment (with no threshold requirement)
- $1,000 worker training credit

Zone Funding

- $2,000,000 proposed in 1998-99 budget
- Competitive grants up to $200,000 to local governments for job-creating projects
- Additional Community Development Block Grant funds will be made available to support the program in eligible communities

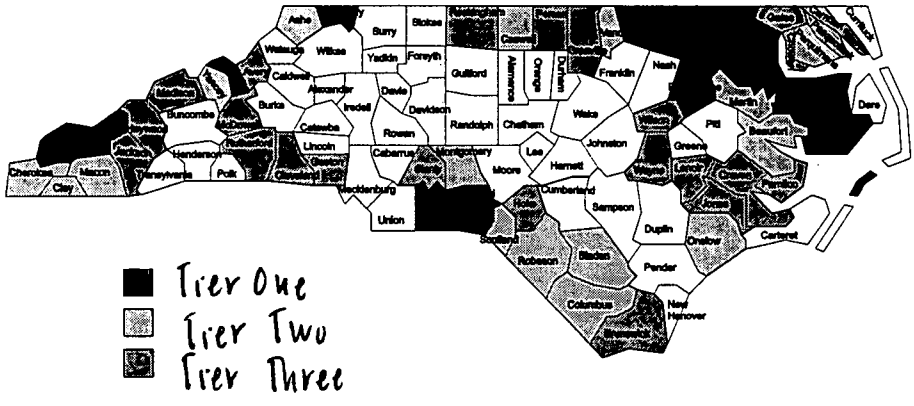


Modifications to Industrial Development Fund Statutes

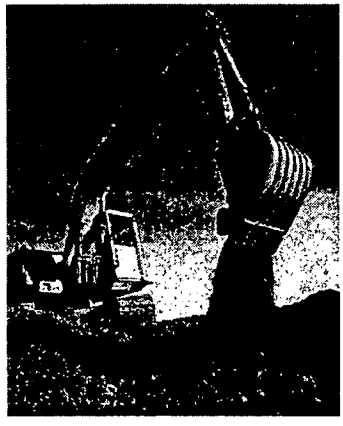
Modifications to Industrial Development Fund Statutes

- Expand IDF statute to extend the Utility Fund, which is currently restricted to Tier 1 counties only, to also include Tier 2 counties
- Increase current IDF maximum per project from $400,000 to $500,000
- Increase the amount per job funding level from $4,000 to $5,000

1998
North Carolina
Enterprise Tiers 1-3



Modifications to Industrial Development Fund Statutes



- Expand the businesses eligible for funding from solely manufacturing to all industries eligible for the Lee Act
- Allow a local government receiving funds to use up to 2% of funds to administer the grant or loan

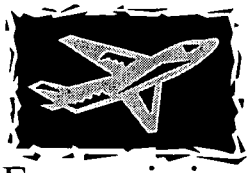
Air Courier Hubs

Infrastructure Investment

- Creates 21st century infrastructure
- Connects North Carolina to growing air courier industry
- Attracts other companies interested in 'just in time' delivery

Federal Express: The Project

- FedEx:
  - Federal Express is the largest express transportation company in the world
- Employment:
  - Estimated at 750 initially in 2003 (225 full-time, 525 part-time); 1,500 by 2007 (500 full-time, 1,000 part-time)
- Investment:
  - Approximately $300 million

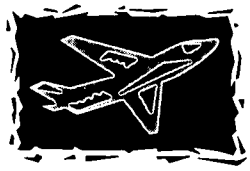


FedEx: The Benefits

- Economic impact of $2.4 billion over 10 years (Jud Study, UNC-Greensboro)
- Good-paying jobs
  - $34,000/yr. average full-time wage
  - $8-$10/hour part-time wage
- No-layoff policy
  - In the past 2 years, added over 6,000 domestic jobs
  - Rank in the top five in the nation for job creation

FedEx: The Benefits

- Promote from within
  - In past 4 years, have moved more than 21,000 employees from part-time to full-time
- Full benefits package for all employees, including part-time (health, dental, vision, pension plan, stock options)
- Tuition reimbursement program for all employees, including part-time



FedEx: The Impact

- FedEx - Alliance/Ft. Worth (since 1994)
  - 7,500 additional jobs created within sixty mile radius
  - $700 million in new investment by companies that located or expanded near hub
  - Intel, Motorola, Eli Lily, Comp USA
- FedEx - Indianapolis (since 1988)
  - More than sixty manufacturing and distribution companies have expanded or located there as a result of the hub
  - Siecor, Bayer Pharmaceutical, John Deere
- FedEx - Memphis (since 1980)
  - 3,177 jobs created by customers of FedEx
  - $247 million in new investment

Air Courier Hubs: Proposed Legislation

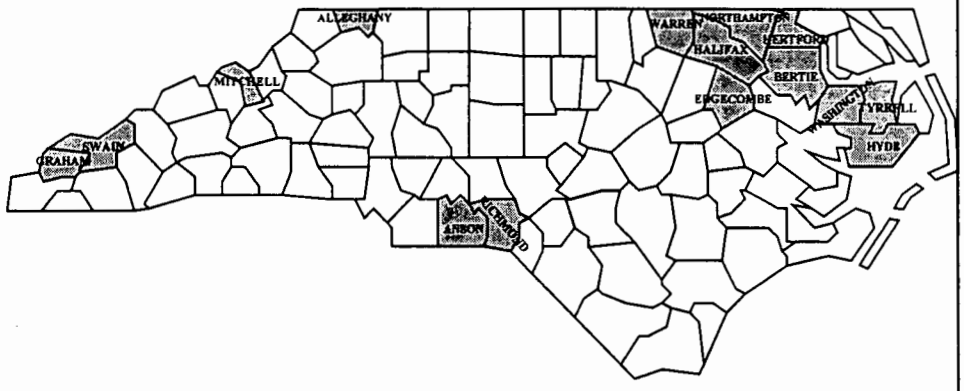
- Add material handling equipment and racking systems to list of eligible equipment to qualify for 1%/$80 sales and use tax cap per single item
- Eliminate sales tax on annual purchases of aircraft parts, lubricants and accessories

Air Courier Hubs: Proposed Legislation

- Exempt property tax on aircraft owned by an air courier and used at courier's hub in this State
- Exempt Piedmont Triad International Airport Authority from 'low bid' requirement
  - Sunset of January 1, 2004
  - Only applies to design & construction of air freight distribution facility

Tier 1 Recycling Facilities

North Carolina's Tier 1 Enterprise Areas

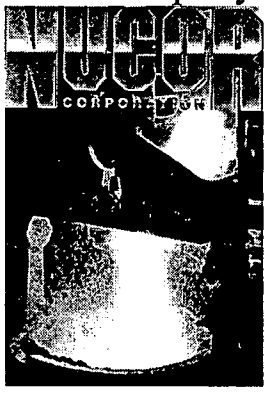


Nucor Corporation: The Project

- Investment: $300 million
- Employment: 300 with $60,000/yr. average wage
- Location: Hertford County (Tier 1 County)
- Product: Plate Steel
- Capacity: 1 million tons/year

Nucor Corporation: The Project

- The Company: Nucor is the second largest steel producer in the U.S. and is headquartered in Charlotte. Nucor employs over 6,000 people and has 29 facilities in the U.S. and the West Indies.



Nucor Corporation: The Benefits

- High wage ($60,000/yr. average salary) jobs in distressed, rural counties
- Full health benefits package for employees and dependents
- Educational assistance for college-bound children of employees

Nucor Corporation: The Benefits

- No-layoff policy
- Estimated $2 billion impact on local region over 25 years

Nucor Corporation: The Impact

- Documented 'spin off' effect at other Nucor facilities:
  - **Berkeley, SC**: Since 1995, 13 suppliers/customers located or committed to locate by the facility which will generate $158 million in investment and created 650 jobs.
  - **Hickman, AR**: Since 1992, 14 suppliers/customers located by the facility creating $100 million in investment and 1,150 jobs.
  - **Average wage at these facilities:** $44,100 per year

Tier 1 Recycling Facilities: Proposed Legislation

- Investment Tax Credit
  - Increase credit to 50% for recycling facilities in Tier 1 counties who invest over $300 million
  - Allow 25 year carryforward
  - Increase credit to 20% for recycling facilities in Tier 1 counties who invest over $150 million

Tier 1 Recycling Facilities: Proposed Legislation

- Eliminate state sales tax on non-process electricity
- Refund sales tax on construction materials
- Reduce to 1%/$80 per item sales tax on annual purchases on material handling and production equipment and machinery

Tier 1 Recycling Facilities: Proposed Legislation

- Reinvestment Tax Credit
  - To equalize transportation cost differential
  - 10 year sunset with yearly cap
  - Money must be used for:
    - 1) Transportation improvements (rail, dredging, etc.) or
    - 2) Industrial sites and infrastructure in the county
    - After 1 & 2 are exhausted, money may then be used to reinvest in property, plant and equipment at the site (over and above initial $300 million)

Fiscal Note

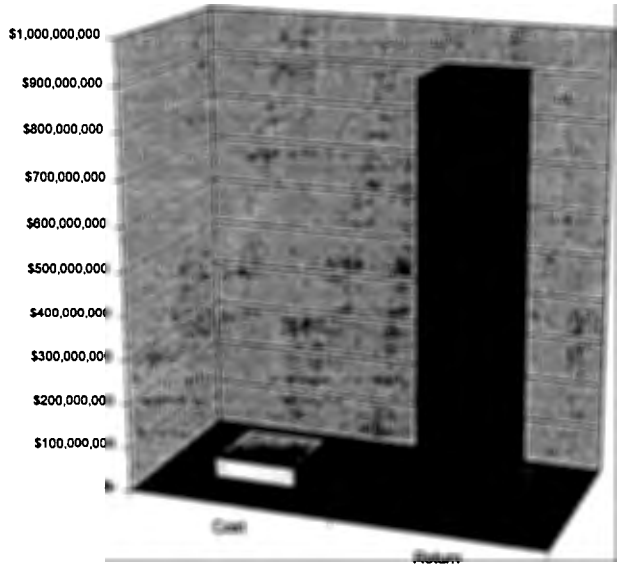
5-year Projections

	98-99	99-00	00-01	01-02	02-03
WSLee **	$0	$0	$1,800,000	$2,475,000	$2,962,500
App. Fee ***	($60,000)	($60,000)	($72,600)	($79,860)	($87,846)
Zones	$0	$0	$423,455	$1,270,364	$2,540,726
Air Courier	$0	$0	$0	$300,000	$600,000
T1 Recycl.	$1,537,500	$2,250,000	$3,147,500	$6,965,000	$9,910,000
TOTAL	**$1,477,500**	**$2,190,000**	**$5,298,355**	**$10,930,504**	**$15,925,380**

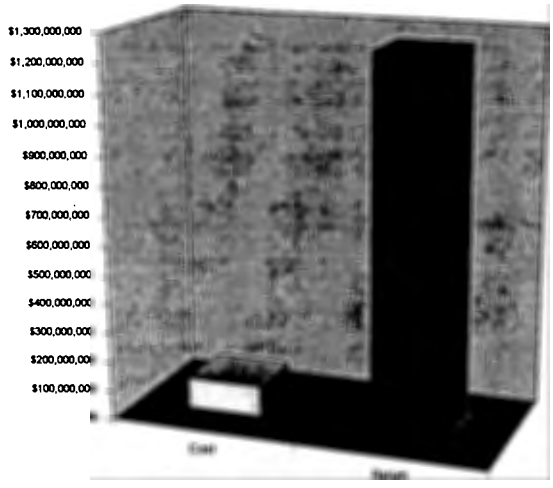
** Includes estimate for the investment tax credit modification, but does not include estimate for R&D tax credit

*** $75 per application at an average of approximately 800 applications per year. Outyear projections assume 10% annual increase in applications.

Return on Investment for FedEx Incentive Package:
Net Present Value of Total Impacts, 1998-2022



Return on Investment for Nucor Incentive Package:
Net Present Value of Total Impacts, 1998-2022



NORTH CAROLINA TAX INCENTIVES FOR RECYCLING FACILITIES

LEGISLATIVE HISTORY

In order to induce companies to construct major recycling facilities in a tier one county in North Carolina that will provide a large number of high paying jobs in an economically depressed area, the State, after a series of negotiations, has provided over a period of years refundable tax credits and certain other tax incentives to a company that builds and operates such a facility within a tier one county. It is intended that these refundable tax credits will be used for capital expenditures by the company for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility, as well as for property, plant, and equipment associated with the facility, and, therefore, will become a part of the corporation's permanent capital. Such refundable tax credits are expected to benefit tier one counties located in North Carolina indirectly in the form of increased employment opportunities and are not intended to be used as specific, quantifiable compensation to the company for the rendering of specific services to the State. Likewise, it is anticipated that these refundable tax credits will benefit the company because the investment in capital expenditures, as described above, will result in ordinary income to the company through the sale of products.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1569*
Finance Committee Substitute Adopted 6/18/98
Finance Committee Substitute #2 Adopted 6/23/98
Proposed House Committee Substitute S1569-PCSX3635-LC

Short Title: Economic Opportunity Act of 1998. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT (1) TO ALLOW CERTAIN RECYCLING FACILITIES AN INVESTMENT TAX CREDIT, A REFUNDABLE INCOME TAX CREDIT, A SALES TAX REDUCTION FOR CRANES AND MATERIALS HANDLING EQUIPMENT, A SALES TAX REFUND FOR CONSTRUCTION MATERIALS, A SALES TAX EXEMPTION FOR ELECTRICITY, AND A PROPERTY TAX EXEMPTION FOR RECYCLING PROPERTY; (2) TO ALLOW AIR COURIERS A SALES TAX REDUCTION FOR MATERIALS HANDLING EQUIPMENT USED AT A HUB, A SALES TAX EXEMPTION FOR AIRCRAFT LUBRICANTS AND PARTS USED AT A HUB, AND A PROPERTY TAX EXEMPTION FOR AIRCRAFT USED AT A HUB; (3) TO EXPAND THE INDUSTRIAL DEVELOPMENT FUND AND UTILITY ACCOUNT TO INCLUDE THE SAME BUSINESSES AS THE WILLIAM S. LEE ACT, TO EXPAND THE UTILITY ACCOUNT TO TIER TWO COUNTIES, TO RAISE THE MAXIMUM GRANT UNDER THE INDUSTRIAL DEVELOPMENT FUND, AND TO ALLOW LOCAL GOVERNMENTS TO USE PART OF THE INDUSTRIAL DEVELOPMENT FUND GRANT FUNDS TO ADMINISTER THE GRANT; (4) TO PROVIDE FOR THE DESIGNATION OF STATE DEVELOPMENT ZONES, TO PROVIDE A LOWER WAGE STANDARD, A HIGHER WORKER TRAINING CREDIT, A ZERO THRESHOLD FOR THE INVESTMENT TAX CREDIT, AND AN

ADDITIONAL JOBS TAX CREDIT WITHIN ZONES, AND TO GIVE ZONES PRIORITY FOR COMMUNITY DEVELOPMENT BLOCK GRANTS; AND (5) TO AMEND THE WILLIAM S. LEE ACT BY EXPANDING THE CENTRAL ADMINISTRATIVE OFFICE CREDIT TO GROSS PREMIUMS TAXES AND TO JOBS CREATED BEFORE THE PROPERTY IS CONSTRUCTED, BY PROVIDING THAT THE INVESTMENT TAX CREDIT THRESHOLD APPLIES ONLY ONCE FOR A TWO-YEAR PROJECT, BY EXPANDING THE INVESTMENT TAX CREDIT TO OPERATING LEASES FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY EXPANDING THE RESEARCH AND DEVELOPMENT TAX CREDIT, BY SIMPLIFYING THE WORKER TRAINING TAX CREDIT, BY IMPOSING A FEE FOR INCENTIVE APPLICANTS, BY EXTENDING THE CREDIT CARRYFORWARD PERIOD FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY PROVIDING FOR A SINGLE TIER DESIGNATION FOR TWO-COUNTY INDUSTRIAL PARKS, BY CLARIFYING THAT CREDITS ARE ALLOWED FOR BUSINESSES THAT ARE SOLD ONLY IF THERE IS IMMINENT CLOSURE OR AN EMPLOYEE BUYOUT, BY CLARIFYING THE METHOD OF CALCULATING THE INVESTMENT TAX CREDIT FOR LEASES, AND BY CLARIFYING THE DEFINITIONS OF THE TYPES OF BUSINESSES ELIGIBLE FOR INCENTIVES.

The General Assembly of North Carolina enacts:

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I. BILL LEE ACT/DEVELOPMENT ZONES
II. INFRASTRUCTURE FUNDS
III. AIR COURIER HUBS
IV. RECYCLING INDUSTRY
V. EFFECTIVE DATES

PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

The following definitions apply in this Article:

(1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~ A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.

(2) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(3) Cost. -- In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(4) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(5) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(6) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(7) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(8) Reserved.

(9) Large investment. -- Defined in G.S. 105-129.4(b1).

(10) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(11) Manufacturing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(12) Purchase. -- Defined in section 179 of the Code.

(13) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

~~(1a) Central administrative office. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~

~~(1b) Cost. -- Determined pursuant to regulations adopted under section 1012 of the Code.~~

~~(2) Data processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~

~~(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.~~

~~(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.~~

~~(4a) Reserved.~~

~~(5) Machinery and equipment. — Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.~~

~~(6) Manufacturing and processing. — Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~

~~(7) Purchase. — Defined in section 179 of the Code.~~

~~(8) Warehousing and distribution. — Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~

"§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-

numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

(d) Exception for Two-County Industrial Park. -- For the purpose of this Article, an eligible two-county industrial park that meets all of the following conditions has the lower enterprise tier designation of the designations of the two counties in which it is located:

(1) It is located in two contiguous counties, one of which has a lower enterprise tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties.

(4) The county with the lower tier designation contributed at least one-half of the cost of developing the park.

"§ 105-129.3A. Development zone designation.

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

(1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) ~~Manufacturing or processing.~~ Manufacturing.
(5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central administrative office,~~ if the taxpayer hires at least 40 additional full-time employees to fill new positions at the ~~office.~~ office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of

investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the~~ a credit with respect to a large investment may be carried forward for the succeeding ~~five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer

meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located.~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment

amount over the applicable threshold. Machinery and equipment is eligible if it is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in

service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section ~~41~~ 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for~~ the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being

trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. ~~Economic~~ Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants ~~for economic development that will ensure that no~~ to ensure that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. ~~105-129.3 and, to~~ 105-129.3.

(2) To the extent practicable, ~~that~~ priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. ~~105-129.3.~~ 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing,~~ eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing,~~ eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations.~~ eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) per new job created up to a maximum of ~~four hundred thousand dollars ($400,000)~~ five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(a1) Definitions. -- The following definitions apply in this section:

(1) Air courier services. -- A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages, except by the United States Postal Service.

(2) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(3) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(4) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(5) Eligible industry. -- A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(6) Reserved.

(7) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(8) Manufacturing. -- Defined in the North American Industry Classification System adopted by the United States Office of Budget and Management.

(9) Reserved.

(10) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

~~(1) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.~~

~~(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.~~

~~(3) Manufacturing and processing. Manufacturing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ eligible industries. The Department of Commerce shall adopt rules providing for the administration of the

program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(6a) Interstate air courier. -- A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.

(6b) Hub. -- An interstate air courier's airport in this State that meets all of the following conditions:

a. The air courier has allocated to the airport under G.S. 105-388 more than sixty percent (60%) of its aircraft value apportioned to this State.

b. The air courier's primary function at the airport is to sort and distribute letters and packages received from multiple consolidation locations.

c. The air courier's primary function at the airport is not to consolidate letters and packages and deliver them to another airport for sorting and distribution."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"k. Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Sales of the following items to an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

"(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms 'interstate air courier' and 'hub' have the meanings provided in G.S. 105-164.3."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. RECYCLING INDUSTRY

Section 12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Tax Incentives for Recycling Facilities.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

(1) Reserved.

(2) Reserved.

(3) Large recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(b).

(4) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(5) Major recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(a).

(6) Owner. -- A person who owns or leases a recycling facility.

(7) Post-consumer waste material. -- Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling facility either directly or indirectly, such as through a broker or an agent.

(8) Purchase. -- Defined in section 179 of the Code.

(9) Recycling facility. -- A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land in the same county and reasonably near the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.

"**§ 105-129.26. Qualification; forfeiture.**

(a) Major Recycling Facility. -- A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(b) Large Recycling Facility. -- A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(c) Forfeiture. -- If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. -- To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Reports. -- The Department of Commerce shall report to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of reinvestment credit refunded to each major recycling facility under G.S. 105-129.28.

"§ 105-129.27. Credit for investing in large or major recycling facility.

(a) Credit. -- An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. -- The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of

Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. -- The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. -- The sale, merger, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. -- If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. -- A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

"**§ 105-129.28. Credit for reinvestment.**

(a) Credit. -- A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. -- The credit allowed to a major recycling facility under this section for the taxable year may not exceed the applicable annual cap provided in the following table:

Taxable Year	Cap
1998	$ 150,000
1999	$ 640,000
2000	$ 3,860,000
2001	$ 8,050,000

2002	$ 9,550,000
2003	$10,100,000
2004-2007	$10,400,000

(c) Reduction. -- For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed by this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. -- For the first ten taxable years after the owner begins construction of the major recycling facility, the owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

Expenses incurred for the purposes allowed in this subsection during a taxable year in the ten-year period may be counted toward a credit allowed in a later taxable year in the ten-year period. If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and the credit allowed the owner under this section for the following taxable year shall be reduced by that amount in accordance with subsection (c) of this section.

After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b) and adding a new subdivision to read:

"(8) Major recycling facility. -- Defined in G.S. 105-129.25."

Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment."

Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to read:

"(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility."

Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

"(g) Major Recycling Facilities. -- The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred."

Section 17. G.S. 105-164.14(f) reads as rewritten:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this

subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund."

Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to read:

"d. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as a purpose recycling or resource recovering of or from solid waste."

Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed effective for taxable years beginning on or after January 1, 2008. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S. 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its repeal.

The sole purpose of this ten-year sunset provision is to allow a determination to be made whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships to transport materials and products to and from the facility. It is the expectation and intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is determined that, based on audited documentation submitted by a major recycling facility and verified by the Secretary of Commerce, that any major recycling facility continues to experience these additional transportation and transloading expenses as of 2008.

PART V. EFFECTIVE DATES

Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 21. Part II of this act becomes effective July 1, 1998.

Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 23. Section 12 of this act is effective for taxable years beginning on or after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998, and apply to sales made on or after that date. Section 18 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV of this act is effective when it becomes law.

1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

x Committee Substitute #2 for
S.B. 1569 A BILL TO BE ENTITLED AN ACT (1) TO ALLOW CERTAIN RECYCLING FACILITIES AN INVESTMENT TAX CREDIT, A REFUNDABLE INCOME TAX CREDIT, A SALES TAX REDUCTION FOR CRANES AND MATERIALS HANDLING EQUIPMENT, A SALES TAX REFUND FOR CONSTRUCTION MATERIALS, A SALES TAX EXEMPTION FOR ELECTRICITY, AND A PROPERTY TAX EXEMPTION FOR RECYCLING PROPERTY; (2) TO ALLOW AIR COURIERS A SALES TAX REDUCTION FOR MATERIALS HANDLING EQUIPMENT USED AT A HUB, A SALES TAX EXEMPTION FOR AIRCRAFT LUBRICANTS AND PARTS USED AT A HUB, AND A PROPERTY TAX EXEMPTION FOR AIRCRAFT USED AT A HUB; (3) TO EXPAND THE INDUSTRIAL DEVELOPMENT FUND AND UTILITY ACCOUNT TO INCLUDE THE SAME BUSINESSES AS THE WILLIAM S. LEE ACT, TO EXPAND THE UTILITY ACCOUNT TO TIER TWO COUNTIES, TO RAISE THE MAXIMUM GRANT UNDER THE INDUSTRIAL DEVELOPMENT FUND, AND TO ALLOW LOCAL GOVERNMENTS TO USE PART OF THE INDUSTRIAL DEVELOPMENT FUND GRANT FUNDS TO ADMINISTER THE GRANT; (4) TO PROVIDE FOR THE DESIGNATION OF STATE DEVELOPMENT ZONES, TO PROVIDE A LOWER WAGE STANDARD, A HIGHER WORKER TRAINING CREDIT, A ZERO THRESHOLD FOR THE INVESTMENT TAX CREDIT, AND AN ADDITIONAL JOBS TAX CREDIT WITHIN ZONES, AND TO GIVE ZONES PRIORITY FOR COMMUNITY DEVELOPMENT BLOCK GRANTS; AND (5) TO AMEND THE WILLIAM S. LEE ACT BY EXPANDING THE CENTRAL ADMINISTRATIVE OFFICE CREDIT TO GROSS PREMIUMS TAXES AND TO JOBS CREATED BEFORE THE PROPERTY IS CONSTRUCTED, BY PROVIDING THAT THE INVESTMENT TAX CREDIT THRESHOLD APPLIES ONLY ONCE FOR A TWO-YEAR PROJECT, BY EXPANDING THE INVESTMENT TAX CREDIT TO OPERATING LEASES FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY EXPANDING THE RESEARCH AND DEVELOPMENT TAX CREDIT, BY SIMPLIFYING THE WORKER TRAINING TAX CREDIT, BY IMPOSING A FEE FOR INCENTIVE APPLICANTS, BY EXTENDING THE CREDIT CARRY FORWARD PERIOD FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY CLARIFYING THAT CREDITS ARE ALLOWED FOR BUSINESSES THAT ARE SOLD ONLY IF THERE IS IMMINENT CLOSURE OR AN EMPLOYEE BUYOUT, BY CLARIFYING THE METHOD OF CALCULATING THE INVESTMENT TAX CREDIT FOR LEASES, AND BY CLARIFYING THE DEFINITIONS OF THE TYPES OF BUSINESSES ELIGIBLE FOR INCENTIVES.

☐ 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)

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

July 1, 98 AM
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Burns	D.O.R.
Greg Rayford	NC DOR
Don Rogers	NC DOT
Lori M Killian	Moore-Van Allen
Al Dade	NCSP
Cam Cova	BPM&L
Scott Ferguson	Moore & Van Allen
Paul Lauda	Lauda Consulting
Mari Lunn	MASinc + Assoc
Butch Bunnells	NC SODA
Joan Perry	Capital Group
Ron Aycock	NC ACC

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Natalie Hawkins	Charlotte Chamber
John McAlister	Duke Energy
Jim Brown	State Ports
Jim Duff	NCAFI
Carl Yoder	OSBM
Jonee	NCDOC
NANCY POMERANZ	DoR
Amna Cameron	DoR
Charles Colbert	DOR
Leslie Bevacqua	NCCBI
Cindy Ellen	NCRMA

VISITOR REGISTRATION SHEET

House Finance — July 1, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Terry Hammond	Daily Tax Rpt
Paul Wilms	NCMBA
Kirk Carlisle	NC DOC
Betty Daniel	DOR
Kathy Sawyer	Commerce
J.M. Beinhard	NCGA
Susan Penny Cole	Commerce
Adam Seay	NCHAC
DAN GERLACH	BIC
Patti Stancell	DOR
Mike Wilkins	DOC
Gordon Deer	DOR

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
AB Swindell	BTT
Stuart H. Russell	
Jonathan Morgan	NCIMED
Mike Carpenter	NCHSA
Nancy Bradley	NCCBD
DR Bean	the Capitol Group
Mike Nunn	NAHEC
JM Pen K	Piedmont Natural Gas
Michael Lanyon	NC Power

VISITOR REGISTRATION SHEET

Name of Committee: House Finance

Date: July 1 1998 - PM
After session

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Paul Wilms	NCHSA
DM Causey	NCBTC
Beryl F. Wade	Gov's Off
~~V. Hedgepeth~~	Office of the Gov.
D Dickinson	DOC - Finance Center
Michael Dyson	ESC
David Clegg	ESC
Gordon W. Deer	DOR
Charles Collins	"
Bill Dail	DOR
Debra Sutton	DOR
John Bain	DOR.

VISITOR REGISTRATION SHEET

Horse Issues

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mike Williams	DOC
[illegible]	WCSR
[illegible]	WCSR
Ashley O. Thrift	WCSR
[illegible]	WCSR
Laura DeVore	DENR
Galand Garrett	Gov Ofc
Kathy Sawyer	Commerce
Mary Camilla	Mecklenburg County
R Alcock	COUNCIL
Andy Romanet	C.T.I.S
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John McAlister	Duke Energy
Catherine Davis	ElectriCities of NC
Liz Parker	GHSP
Steve Upchurch	CP&L
Michelle Cook	Weyerhaeuser
Nancy Bradley	NCCBD
Robert Wilson	S.O.S.
Jonathan Morgan	NCDMED

MINUTES

COMMITTEE ON FINANCE

TUESDAY, JUNE 30, 1998

8:30 A.M. AND AFTER SESSION

ROOM 544-LOB

Rep. Brawley called the meeting to order and introduced Pages and Sergeant-at-arms staff. A silent roll was taken (roll list denotes members present).

HB-1529 HORSE PROMOTION ASSESSMENT

Rep. Brown explained again. (This had been discussed the previous week). Rep. Carpenter moved for a favorable report. Chairman Brawley reminded members of a pending amendment from the Thursday, June 25th meeting. Rep. Brawley explained the amendment. Rep. Brown advised he personally opposed the amendment. Rep. Cunningham spoke in favor of the amendment and asked Rep. Brown why he opposed. Rep. Nichols supports the amendment. Rep. Carpenter spoke in favor of the amendment and urged Rep. Brown to reconsider. Rep. Brown explained his personal opinion of the amendment, but would accept the favor of the committee. The vote was taken on the amendment and adopted. No further discussion so the vote was taken and the bill was given a favorable report, unfavorable to the original bill.

SB-1226 REVENUE LAWS TECHNICAL CHANGES

Rep. Hackney moved for adoption of the Proposed Committee Substitute for discussion. So moved. Sen. Cochrane explained. Rep. Nichols asked how it affected taxes. Sen. Cochrane explained. Rep. Capps questioned divisible and marital property, (page 8, line 41). Rep. Hackney answered and explained. Ms. Cindy Avrette, Research Division, also added explanation. A technical amendment was sent forth by Rep. Hill. Chairman Brawley read and explained. The vote was taken and the amendment was adopted. Rep. Luebke and Rep. Russell questioned Sen. Cochrane and she replied. Ms. Avrette added comments. Rep. Hackney sent forth an amendment for clarification of page 8, line 41 with the divisible and marital property. Chairman Brawley read and Rep. Hackney explained. The vote was taken and the amendment was adopted. Rep. Capps moved for a favorable report, unfavorable to the original bill. The vote was taken and passed as moved.

SB-1252 SIMPLIFY PRIVILEGE LICENSE

Sen. Hoyle explained this was generated from Revenue Laws Study Commission. Rep. Luebke moved for a favorable report. The vote was taken and passed.

SB-1230 MOTOR FUELS TAX CHANGES

Rep. Dickson moved for approval of the PCS for discussion. So moved. Sen. Kerr offered a moment of personal privilege to recognize Mr. Bob Beck, Motor Fuels Division of Department of Revenue, on his up coming retirement from the Department after 40 years. Sen. Kerr then explained the bill. Rep. Hightower questioned who pays the tax. Ms. Donna Alderman, Motor Fuels Division of Department of Revenue answered. Rep. McComas questioned the legislation passed last year regarding boat fuel. Sen. Kerr and Ms. Avrette responded. Mr. Bob Beck, DOR, added comments. Rep. McComas was still concerned about sales tax for boaters. Mr. Charles Collins, Sales Tax Division of Department of Revenue addressed members and explained. Rep. Nichols questioned Mr. Richard Bostic, Fiscal Research Division, about the note and he responded. Sen. Kerr added comments. Rep. Nichols sent forth an amendment and Ms. Martha Walston, Fiscal Research Division explained. Mr. Bostic also explained how this changes the fiscal note. Rep. Nichols moved for adoption. Sen. Kerr opposed the amendment. Mr. Collins, DOR, addressed members about the amendment. Rep. Dickson asked for clarification. Chairman Brawley responded. Rep. Dickson spoke and urged caution of the amendment. Rep. Nichols spoke again on his amendment. Sen. Kerr responded. Mr. Beck, DOR also spoke on the amendment. Rep. Nesbitt shared concerns about this being a tax increase. Rep. Dickson spoke again and now supports the amendment. Rep. Luebke questioned Mr. Bostic and he responded. Mr. Tommy Chapman, Regional Manager for BP Racing Fuel, addressed members and spoke on the bill. Rep. Cunningham asked his opinion of the amendment and he replied. The vote was taken and the amendment was adopted. Rep. Buchanan moved for a favorable report, unfavorable to the original bill. Rep. Cunningham questioned the kerosene portion of the bill. Rep. Howard questioned the airport and wants a better clarification of this legislation. She requested this be delayed until after session for further discussion. Chairman Brawley gave another overview of this bill. Rep. Nesbitt wanted more clarification for residents using kerosene. Mr. Beck, DOR explained. Rep. Howard had additional concerns. Chairman Brawley announced this would be continued 15 minutes after session this afternoon.

Meeting adjourned at 10:00 a.m.

Chairman Brawley called the meeting back to order at 3:15 p.m. in Room 544-LOB. Rep. Howard had her concerns answered prior to returning to the meeting. The vote was taken on the amendment and it was adopted. The vote was taken to give the bill a favorable report, unfavorable to the original bill and it was passed.

The meeting adjourned at 3:20 p.m.

Robert Brawley
Rep. Brawley, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

TUESDAY, JUNE 30, 1998

8:30 A.M. & AFTER SESSION IF NECESSARY

ROOM 544-LOB

CALL TO ORDER

Rep. Brawley

BILLS FOR DISCUSSION:

HB-1529	Horse Promotion Assessment	Rep. Brown
SB-1226	Revenue Laws Technical Changes	Sen. Cochrane
SB-1230	Motor Fuels Tax Changes	Sen. Kerr
SB-1252	Simplify Privilege License	Sen. Hoyle

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1529
Committee Substitute Favorable 6/4/98

Short Title: Horse Promotion Assessment. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A HORSE PROMOTION ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 69.

"Horse Industry Promotion Act.

"**§ 106-820. Title.**

This Article may be cited as the Horse Industry Promotion Act.

"**§ 106-821. Findings.**

The General Assembly finds that the horse industry makes an important contribution to the State's economy, and that it is appropriate for the State to provide a means for horse owners to voluntarily assess themselves in order to provide funds to promote the interests of the horse industry.

"**§ 106-822. Definitions.**

As used in this Article:

(1) 'Commercial horse feed' means any commercial feed, as defined in G.S. 106-284.33, labeled for equine use.

(2) 'Council' means the North Carolina Horse Council.

(3) 'Department' means the Department of Agriculture and Consumer Services.

(4) 'Equine' means a horse, pony, mule, donkey, or hinny.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1529 (Second Edition)

SHORT TITLE: Horse Promotion Assessment

SPONSOR(S): Rep. Brown

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Horse Council Funds	$200,000	$200,000	$200,000		
EXPENDITURES	(to be determined by the Horse Council)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Agriculture and Consumer Services

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: The bill authorizes the North Carolina Horse Council to hold a referendum among horse owners on whether to levy a fee of up to $2 a ton on commercial horse feed for the purpose of promoting the horse industry. If approved by a majority of the horse owners, the Department of Agriculture and Consumer Services will collect the fee from commercial feed dealers and distributors and remit the funds to the Horse Council on a quarterly basis. The assessment will be levied for no more than three years. Horse owners have a right to request a refund of the fee from the Horse Council if they do not wish to participate in the promotion effort.

ASSUMPTIONS AND METHODOLOGY: In the 1996 North Carolina Equine Survey, the Department of Agriculture and Consumer Services identified 33,000 equine owners and 132,000 head of equine in the state. The Department 's 1996 Feed Tonnage Report showed 97,279 tons of horse feed were purchased in the state. Horse feed sales grew 8.7% a year from 1993 to 1996, but the growth rate was only 4.4% from 1995 to 1996. Without data on the projected growth in the state's equine herd, it is impossible to predict what the future growth in feed sales will be. This

note assumes a flat 100,000 tons of horse feed are purchased each year during the three years that the assessment is in place. If the referendum is successful, this note assumes the Horse Council will assess $2 per ton beginning in FY 1998-99 for revenues of $200,000 per year.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington

DATE: June 20, 1998

EXPLANATION OF HOUSE BILL 1529 (2d Ed.):
Horse Promotion Assessment

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 23, 1998
SPONSOR: Representative Brown

House Bill 1529 provides for a referendum to allow horse owners to assess themselves through a levy on commercial horse feed, in order to provide funds to the North Carolina Horse Council. These funds will be used to promote interests in the horse industry and for administrative expenses reasonably necessary to carry out this promotion. The 2nd Edition differs from the introduced bill by adding definitions for "equine" and "horse owner". This 2nd Edition was given a favorable report in the House Committee on Agriculture. The act is effective when it become law.

House Bill 1529 authorizes the North Carolina Horse Council to conduct a referendum among horse owners to determine if the assessment should be levied. To take effect, the assessment must be approved by a majority of votes cast in the referendum. The amount of the assessment may not exceed $2 per ton of commercial horse feed and shall not extend for a period of more than 3 years. The Council is to determine the exact amount and period of the levy.

If the assessment is approved, the North Carolina Department of Agriculture and Consumer Services shall notify all commercial feed dealers and distributors of the assessment and shall provide forms for reporting the assessment. The assessment is to be remitted to the Department with the inspection feed imposed under the Commercial Feed Law, Article 31C of Chapter 106. Anyone who purchases commercial horse feed upon which the assessment has been paid may demand a refund of the assessment by writing the Horse Council within 30 days of buying the feed and providing proof of purchase.

The Department is to remit funds to the North Carolina Horse Council at least quarterly.

Similar promotion assessment acts have been enacted for flue-cured tobacco farmers, strawberry producers and pork producers,

Robert Beverly

#1529

Triangle Wide Horsemen's Association
1738 Alt-Union Ridge Rd.
Burlington, N.C. 27217

Commissioner Jim Graham
N.C. Department of Agriculture
Raleigh, N.C. 27602

29 June 1998

Subject: Horse Industry Promotion Assessment

Commissioner Graham,

It has been brought to my attention that there are some misconceptions about the TWHA's position on the Horse Industry Promotion Assessment bill currently before the General Assembly. As President of Triangle Wide Horsemen's Association our current position is:

1. The TWHA lacks any substantive information on this bill. The N.C. Horse Council has not informed us of the contents of the bill.
2. Consequently, the membership of the TWHA has not been informed that the Horse Industry Promotion Assessment bill even exists. We have not had the several months to discuss the pros and cons of the whether the assessment is even warranted, much less whether a referendum should be held. Thus a vote by the general membership to determine our position has not taken place.
3. Therefore, the Triangle Wide Horsemen's Association's position is neither for nor against the Horse Industry Promotion Assessment.

Sincerely yours,

Jim Willoughby
President

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1529, 2nd Ed DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Brawley

moves to amend the bill on page 2, line s 30-31

( ) WHICH CHANGES THE TITLE

by _____

by changing "(b)" to "(c)" and adding a new subsection to read:

"(b) The assessment is voluntary. A person responsible for paying the assessment on a ~~purchase~~ may elect not to pay the assessment by filing in lieu of the report a certificate that the person elects not to pay.")

and on page 2, lines 40, ~~[illegible]~~, by rewriting the lines to read:

"has been paid has the right to refuse in writing to pay the assessment. The ~~purchaser~~ seller shall reduce the price accordingly and may seek a refund of the refused assessment by making ";

and on page 2, line, 42, by deleting "purchase" and substituting "refusal".

SIGNED Robert Brawley

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1529
Committee Substitute Favorable 6/4/98
Proposed Committee Substitute H1529-PCSX3151-LA

Short Title: Horse Promotion Assessment. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A HORSE PROMOTION ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 69.

"Horse Industry Promotion Act.

"**§ 106-820. Title.**

This Article may be cited as the Horse Industry Promotion Act.

"**§ 106-821. Findings.**

The General Assembly finds that the horse industry makes an important contribution to the State's economy and that it is appropriate for the State to provide a means for horse owners to voluntarily assess themselves in order to provide funds to promote the interests of the horse industry.

"**§ 106-822. Definitions.**

As used in this Article:

(1) 'Commercial horse feed' means any commercial feed, as defined in G.S. 106-284.33, labeled for equine use.

(2) 'Council' means the North Carolina Horse Council.

(3) 'Department' means the Department of Agriculture and Consumer Services.

(4) 'Equine' means a horse, pony, mule, donkey, or hinny.

(5) 'Horse owner' means a person who (i) is a North Carolina resident and (ii) owns or leases an equine or has a financial interest in equines or an equine operation.

"**§ 106-823. Referendum.**

(a) The Council may conduct a referendum among horse owners upon the question of whether an assessment shall be levied consistent with this Article.

(b) The Council shall determine all of the following:

(1) The amount of the proposed assessment, not to exceed two dollars ($2.00) per ton of commercial horse feed.

(2) The period for which the assessment shall be levied, not to exceed three years.

(3) The time and place of the referendum.

(4) Procedures for conducting the referendum and counting votes.

(5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot.

(d) All horse owners are eligible to vote in the referendum. The Council must send press releases of the referendum to newspapers in the State and to any appropriate trade journal identified by the Council. The Council shall also have posted a notice of the referendum in every place the Council identifies where commercial horse feed is sold. Any questions concerning eligibility to vote shall be resolved by the board of directors of the Council.

"**§ 106-824. Majority vote required; collection of assessment.**

(a) The assessment shall not be collected unless a majority of the votes cast in the referendum are in favor of the assessment. If a majority of the votes cast in the referendum are in favor of the assessment, the Department shall notify all commercial horse feed manufacturers and distributors of the assessment. The assessment shall apply to all commercial horse feed subject to the provisions of G.S. 106-284.40(b), and the assessment shall be remitted to the Department with the inspection fee imposed by G.S. 106-284.40. The Department shall provide forms for reporting the assessment. Persons who purchase commercial horse feed on which the assessment has not been paid shall report these purchases and pay the assessment to the Department.

(b) The assessment is voluntary. A person responsible for paying the assessment on a purchase may elect not to pay the assessment by filing in lieu of the report a certification that the person elects not to pay.

(c) The Council may bring an action to collect unpaid assessments against any horse owner, feed manufacturer, or distributor who fails to pay the assessment and, if successful, shall recover the cost of such action, including attorneys' fees.

"**§ 106-825. Use of funds; refunds.**

(a) The Department shall remit all funds collected under this Article to the Council at least quarterly. The Council shall use these funds to promote the interests of the horse industry and may use these funds for those administrative expenses that are reasonably necessary to carry out this function.

(b) Any person who purchases commercial horse feed upon which the assessment has been paid has the right to refuse in writing to pay the assessment. The seller shall reduce the price accordingly and may seek a refund of the refused assessment by making demand in writing to the Council within 30 days of purchase of the feed. This demand shall be accompanied by proof of refusal satisfactory to the Council."

Section 2. G.S. 106-550 reads as rewritten:

"**§ 106-550. Policy as to promotion of use of, and markets for, farm products.**

It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, sweet potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the agricultural products of tobacco, strawberries, strawberry plants, ~~or~~ porcine animals, or horses, with respect to which separate provisions have been made."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1529 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR A HORSE PROMOTION ASSESSMENT.

☐ 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.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1226
Finance Committee Substitute Adopted 6/11/98
Proposed Committee Substitute S1226-PCS9758-LC

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL TECHNICAL CHANGES.

Section 1(a). Article 8D of Chapter 105 of the General Statutes is repealed.

Section 1(b). G.S. 105-130.11(a)(2) reads as rewritten:

"(2) ~~Building and loan associations and savings and loan associations subject to tax under Article 8D of this Chapter; cooperative~~ Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes."

Section 1(c). G.S. 105-130.5(c) is amended by adding a new subdivision to read:

"(5) A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, to the extent included in federal taxable income."

Section 1(d). G.S. 105-228.24A is recodified as G.S. 105-130.43.

Section 1(e). G.S. 105-130.43, as recodified by this section, reads as rewritten:

"**§ 105-130.43. ~~Income tax credit for~~ Credit for savings and loan supervisory fees.**

Every savings and loan association is allowed a credit against the ~~income tax imposed on it under Article 4 of this Chapter~~ tax imposed by this Part for a taxable year equal to the amount of supervisory fees, paid by the association during the taxable year, that were assessed by the Administrator of the Savings Institutions Division of the Department of Commerce for the State fiscal year beginning ~~on or~~ during that taxable year. This credit may not exceed the amount of ~~income~~ tax ~~payable by the association~~ imposed by this Part for the taxable ~~year for which the credit is claimed,~~ year, reduced by the sum of all ~~income tax~~ credits allowed against the tax, except tax payments made by or on behalf of the ~~association. The supervisory fees shall not be an allowable deduction in determining taxable income for any association claiming the credit allowed under this section.~~ taxpayer. A taxpayer that claims the credit allowed under this section may not deduct the supervisory fees in determining taxable income."

Section 1 (f). G.S. 105-83(d) reads as rewritten:

"(d) This section does not apply to corporations liable for the tax levied under G.S. ~~105-102.3.~~ 105-102.3 or to savings and loan associations."

Section 1(g). G.S. 105-88(b) reads as rewritten:

"(b) ~~Nothing in this section shall be construed to~~ This section does not apply to banks, industrial banks, trust companies, ~~building~~ savings and loan associations, ~~or~~ cooperative credit unions, ~~nor shall it apply to~~ the business of negotiating loans on real estate as described in G.S. 105-41, ~~nor to~~ pawnbrokers lending or advancing money on specific articles of personal property, ~~nor to~~ or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. ~~It shall apply~~ This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of ~~such~~ the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect ~~same,~~ the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker ~~shall be~~ is required to obtain a privilege license under this section merely because ~~he advances his~~ the broker advances the broker's own funds and takes a security interest in real estate to secure ~~such~~ the advances and when, at the time of ~~such advance of his own funds, he~~ the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount ~~such~~ the obligation within the period specified in ~~said~~ the arrangement or extensions thereof; or when, at the time of the advance ~~of his own funds, he~~ the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of ~~said~~ the obligation and does sell the obligation within the period specified in ~~said~~ the arrangement or extensions thereof; or because ~~he advances his~~ the broker advances the broker's own funds in

temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above ~~shall be~~ is required to obtain a privilege license under this section."

Section 1(h). G.S. 105-102.3 reads as rewritten:

"**§ 105-102.3. Banks.**

There is hereby imposed upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B or 54C of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, be organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, an annual privilege tax in the amount of thirty dollars ($30.00) for each one million dollars ($1,000,000) or fractional part thereof of total assets held as hereinafter provided. The assets upon which the tax is levied shall be determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities; provided, however, where a new bank commences operations within the State there shall be levied and paid an annual privilege tax of one hundred dollars ($100.00) until such bank shall have made four quarterly call reports of condition (consolidating domestic subsidiaries) for a single calendar year; provided further, however, where a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an in-state bank with one or more branches outside this State, the assets of the out-of-state bank or of the in-state bank upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the out-of-state bank or of the in-state bank which are employed outside this State. The tax imposed hereunder shall be for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. Counties, cities and towns shall not levy a license or privilege tax on the businesses taxed under this section, nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5."

Section 1(i). This section repeals any law that would otherwise exempt savings and loan associations, as defined in G.S. 54B-4, from the franchise tax imposed in Article 3 of Chapter 105 of the General Statutes.

Section 1(j). This section becomes effective for taxable years beginning on or after January 1, 1999.

Section 2. G.S. 105-17 is repealed.

Section 3. G.S. 105-25 is repealed.

Section 4. G.S. 105-130.5(a)(10) reads as rewritten:

"(10) The total amounts allowed under this ~~Article~~ Chapter during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this ~~Article~~ Chapter the apportionment factor used by it in determining the amount of its apportioned income."

Section 5. G.S. 105-131.1(b) reads as rewritten:

"(b) Each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, shall be taken into account by the shareholder in the manner and subject to the adjustments provided in ~~Division II~~ Parts 2 and 3 of this Article and section 1366 of the Code and shall be subject to the tax levied under ~~Division II~~ Parts 2 and 3 of this Article."

Section 6. G.S. 105-131.6 reads as rewritten:

"§ 105-131.6. Distributions.

(a) Subject to the provisions of subsection (c) of this section, a distribution made by an S Corporation with respect to its stock to a resident shareholder ~~shall be~~ is taxable to the shareholder as provided in ~~Division II~~ Parts 2 and 3 of this Article to the extent that the distribution is characterized as a dividend or as gain from the sale or exchange of property pursuant to section 1368 of the Code.

(b) Subject to the provisions of subsection (c) of this section, any distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period ~~shall not be~~ is not taxable to the shareholder as provided in ~~Division II~~ Parts 2 and 3 of this Article to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with section 1371(e) of the Code.

(c) In applying sections 1368 and 1371(e) of the Code to any distribution referred to in this section:

(1) The term "adjusted basis of the stock" means the adjusted basis of the shareholder's stock as determined under G.S. ~~105-131.3; and~~ 105-131.3.

(2) The accumulated adjustments account maintained for each resident shareholder ~~shall~~ must be equal to, and ~~shall be~~ adjusted in the same manner as, the corporation's accumulated adjustments account defined in section 1368(e)(1)(A) of the Code, except that:

a. The accumulated adjustments account shall be modified in the manner provided in G.S. ~~105-131.3(b)(1); and~~ 105-131.3(b)(1).

b. The amount of the ~~Corporation's~~ corporation's federal accumulated adjustments account that existed on the day this State began to measure the S Corporation shareholders'

income by reference to the income of the S Corporation ~~shall be~~ is ignored and ~~shall be~~ is treated for purposes of ~~Divisions I and II of~~ this Article as additional accumulated earnings and profits of the corporation."

Section 7. G.S. 105-131.7(e) reads as rewritten:

"(e) Amounts paid to the Department on account of the corporation's shareholders under subsections (b) and (c) ~~shall~~ constitute payments on their behalf of the income tax imposed on them under ~~Division II~~ Parts 2 and 3 of this Article for the taxable period."

Section 8. G.S. 105-131.8 reads as rewritten:

"**§ 105-131.8. Tax credits.**

(a) For purposes of G.S. ~~105-151,~~ 105-151 and G.S. 105-160.4, each resident shareholder ~~shall be~~ is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state ~~which~~ that does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(b) ~~Each~~ Except as otherwise provided in G.S. 105-160.3, each shareholder of an S Corporation is allowed as a credit against the tax imposed by ~~Division II~~ Parts 2 and 3 of this Article an amount equal to the shareholder's pro rata share of the tax credits for which the S Corporation is eligible."

Section 9. G.S. 105-134.1(7b) is repealed.

Section 10. G.S. 105-160.3(b) reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

(1) G.S. 105-151. Tax credits for income taxes paid to other states by individuals.

(2) G.S. 105-151.11. Credit for child care and certain employment-related expenses.

(3) G.S. 105-151.18. Credit for the disabled.

(4) G.S. 105-151.24. Credit for children.

(5) G.S. 105-151.26. Credit for charitable contributions by nonitemizers."

Section 11. G.S. 105-163.3(a) reads as rewritten:

"(a) Requirement. -- Every payer who pays a contractor more than six hundred dollars ($600.00) during a calendar year shall deduct and withhold from compensation paid to ~~a~~ the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary."

Section 12. G.S. 105-163.3(b) reads as rewritten:

"(b) Exemptions. -- The withholding requirement does not apply to the following:

(1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.

(2) Compensation paid to an ordained or licensed member of the clergy.

(3) Compensation paid to an entity exempt from tax under G.S. 105-130.11."

Section 13. G.S. 105-163.3(e) reads as rewritten:

"(e) Records. -- If a payer does not withhold from payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer shall obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer shall obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer shall obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer shall obtain the partnership's address and taxpayer identification number. The payer shall retain this information with its records."

Section 13.1(a). G.S. 105-164.3(16)f. reads as rewritten:

"f. The sales price of tangible personal property sold through a coin-operated vending machine, other than closed-container soft drinks ~~subject to excise tax under Article 2B of this Chapter~~ or tobacco products, is considered to be fifty percent (50%) of the total amount for which the property is sold in the vending machine."

Section 13.1(b). G.S. 105-259(b)(15) reads as rewritten:

"(15) To exchange information concerning a tax imposed by Articles 2A, ~~2B,~~ 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department."

Section 13.1(c). G.S. 105-267 reads as rewritten:

"**§ 105-267. Taxes to be paid; suits for recovery of taxes.**

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper officer, and that payment shall be without prejudice to any defense of rights the person may have regarding the tax. At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter,

may sue the Secretary in the courts of the State for the amount demanded. The protest period for a tax levied in Article 2A, ~~2B,~~ 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is one year after payment.

The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it is determined that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section."

Section 13.1(d). This section becomes effective July 1, 1999.

Section 13.2. G.S. 105-164.4(a)(5) reads as rewritten:

"(5) The rate of two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased ~~with coupons issued~~ under the Food Stamp Program, 7 U.S.C. § 51."

Section 14. G.S. 105-164.13(11) reads as rewritten:

"(11) Any of the following fuel:

a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under ~~G.S. 105-449.105(c) or (d) or under~~ G.S. 105-449.107.

b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107."

Section 14.1. G.S. 105-164.13(38) reads as rewritten:

"(38) Food and other items lawfully purchased ~~with coupons issued~~ under the Food Stamp Program, 7 U.S.C. § 51, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Food Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Food Program."

Section 15. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. -- An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for ~~compensation, is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of Transportation, and is required by either federal agency to keep records according to generally accepted accounting principles (GAAP) or, in the case of a small certificated air carrier, to make reports~~

~~of financial and operating statistics.~~ compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

Section 15.1. G.S. 105-187.6(a) reads as rewritten:

"(a) Full Exemptions. -- The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.

(2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale.

(3) To the same owner to reflect a change or correction in the owner's name.

(4) By will or intestacy.

(5) By a gift between a husband and wife, a parent and child, or a stepparent and a stepchild.

(6) By a distribution of ~~marital~~ property as a result of a divorce.

(7) To a handicapped person from the Department of Health and Human Services after the vehicle has been equipped by the Department for use by the handicapped.

(8) To a local board of education for use in the driver education program of a public school when the motor vehicle is transferred:
a. By a retailer and is to be transferred back to the retailer within 300 days after the transfer to the local board.
b. By a local board of education."

Section 16. G.S. 105-197 reads as rewritten:

"**§ 105-197. When return required; due date of tax and return.**

(a) When Return Required. -- Anyone who, during the calendar year, gives to a donee a gift of a future interest or one or more ~~gifts~~ taxable gifts whose total value exceeds the amount of the annual exclusion set in G.S. 105-188(d) must file a gift tax return, under oath or affirmation, with the Secretary on a form prescribed by the Secretary. For the purpose of this section, a taxable gift is a gift that is not exempt under G.S. 105-188(h) or (i).

(b) Due Date. -- The tax is due on April 15th following the end of the calendar year. A return must be filed on or before the due date of the tax. A taxpayer may ask the Secretary of Revenue for an extension of time for filing a return under G.S. 105-263."

Section 17. G.S. 105-228.5(d) reads as rewritten:

"(d) Tax Rates; Disposition. --

(1) Workers Compensation. -- The tax rate to be applied to gross premiums, or the equivalent thereof in the case of self-insurers, ~~collected~~ on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The net proceeds shall be credited to the General Fund.

(2) Other Insurance Contracts. -- The tax rate to be applied to gross premiums ~~collected~~ on all other insurance contracts issued by insurers shall be one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund.

(3) Additional Statewide Fire and Lightning Rate. -- An additional tax shall be applied to ~~amounts collected~~ gross premiums on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent (1.33%). Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

(4) Additional Local Fire and Lightning Rate. -- An additional tax shall be applied to ~~amounts collected~~ gross premiums on contracts of insurance applicable to fire and lightning coverage within fire districts at the rate of one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25.

(5) Article 65 Corporations. -- The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations shall be one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the General Fund."

Section 18. G.S. 105-228.10 reads as rewritten:

"**§ 105-228.10. No additional local taxes.**

~~No county, city, or town shall be allowed to impose any additional tax, license, or fee, other than ad valorem taxes, upon any insurance company or association paying the fees and taxes~~ No city or county may levy on a person subject to the tax levied in this ~~Article.~~ Article a privilege tax or a tax computed on the basis of gross premiums."

Section 19. G.S. 105-249.3 is repealed.

Section 20. G.S. 105-259(b)(3) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(3) Review by a tax official of another ~~state or the Internal Revenue Commissioner of the United States~~ jurisdiction to aid the ~~state or the Commissioner~~ jurisdiction in collecting a tax imposed by this ~~State, the other state, or the United States~~ State or the other jurisdiction if the laws of the other ~~state or the United States allow the state or the United States~~ jurisdiction allow it to provide similar tax information to a representative of this State."

Section 21. G.S. 105-264 reads as rewritten:

"**§ 105-264. Effect of Secretary's interpretation of revenue laws.**

It ~~shall be~~ is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules.

An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes ~~a rule or a bulletin,~~ an interpretation, a taxpayer who relied ~~upon the rule or bulletin~~ on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the ~~rule or bulletin~~ interpretation was changed and was not paid by reason of reliance upon the ~~rule or bulletin.~~ interpretation. If a taxpayer requests in writing specific advice from the Department and receives in response erroneous written advice, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent the advice was reasonably relied upon by the taxpayer and the penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.

This section does not prevent the Secretary from changing an interpretation and it does not prevent a change in an interpretation from applying on and after the effective date of the change."

Section 22. G.S. 105-277.3 reads as rewritten:

"**§ 105-277.3. Agricultural, horticultural, and forestland -- Classifications.**

(a) Classes Defined. -- The following classes of property are ~~hereby~~ designated special classes of property under authority of ~~Article V, Sec. 2(2)~~ Section 2(2) of Article V of the North Carolina Constitution and shall be appraised, ~~assessed and taxed as hereinafter provided.~~ assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. -- Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

(2) Horticultural land. -- Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have ~~either:~~ met the applicable minimum gross income requirement. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been

~~a.~~ ~~Been~~ used to produce evergreens intended for use as Christmas trees ~~and~~ must have met the ~~qualifying or~~ minimum gross income requirements established by the Department of Revenue for the ~~land; or~~

~~b.~~ ~~Produced~~ land. All other horticultural land must have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. ~~Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products.~~

(3) Forestland. -- Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) Natural Person Ownership Requirements. -- In order to come within a classification described in ~~subdivision (a)(1), (2) or (3), above, the property must,~~ subsection (a) of this section, the land must, if owned by ~~natural persons,~~ a natural person, also satisfy one of the following conditions:

(1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust ~~which~~ that transferred the ~~property~~ land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. -- ~~If~~ In order to come within a classification described in subsection (a) of this section, the land must, if owned by a business entity or trust, ~~the property must~~ have been owned by the business entity or trust or by one or more of its ~~members, or by one or more of its creators in the case of a trust,~~ members or creators, respectively, for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed. ~~Notwithstanding the provisions of G.S. 105-277.2(4)b, a business entity qualifying for a classification described in G.S. 105-277.3 shall not lose the benefit of the classification by reason of the death of one of its members if the decedent's ownership passes to and remains in a relative of the decedent.~~

(b2) Exception to Ownership Requirements. -- ~~Property loses its eligibility for the classifications described in subsection (a) of this section if ownership of the property passes to anyone other than a relative of the owner or passes to or from a business entity or trust from or to anyone other than its members or its creators or beneficiaries, respectively, except that property does not lose its eligibility if both of the following conditions are met: (i) it~~ G.S. 105-277.4(c) provides that deferred taxes are payable if land fails to meet any condition or requirement for classification. Accordingly, if land fails to meet an ownership requirement due to a change of ownership, G.S. 105-277.4(c) applies. Despite this failure and the resulting liability for taxes under G.S. 105-277.4(c), the land may qualify for classification in the hands of the new owner if both of the following conditions are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land:

(1) The land was appraised at its present use value or was eligible for appraisal at its present use value ~~pursuant to that subsection~~ at the time title to the ~~property~~ land passed to the ~~present owner, and (ii)~~ ~~at~~ new owner.

(2) At the time title to the ~~property~~ land passed to the ~~present~~ new owner, the owner owned other ~~property~~ land classified under subsection (a).

~~The fact that property may retain its eligibility because the preceding two conditions were met does not affect any liability for deferred taxes under G.S. 105-277.4(e) if those taxes were otherwise due at the time title passed to the present owner.~~

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. -- ~~Enrollment~~ Land enrolled in the federal Conservation Reserve Program authorized by ~~Title XII of the Food Security Act of 1985 (Pub. L. 99-198), as amended, shall not preclude eligibility of land for present use value treatment solely on the grounds that the land is no longer~~ 16 U.S.C. § 1381 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program shall be assessed as agricultural land if it is planted in vegetation other than trees, or as ~~forest land~~ forestland if it is planted in trees.

(e) Exception for Turkey Disease. -- ~~Notwithstanding the provisions of subsection (a) of this section, agricultural~~ Agricultural land that meets all of the following conditions ~~does not lose its eligibility for present use value treatment solely on the grounds that it is no longer in actual production, it no longer meets the minimum income requirements, or both:~~ is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.

(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poult Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

(3) The land is otherwise eligible for present use value treatment."

Section 23. G.S. 105-277.4(c) reads as rewritten:

"(c) Deferred Taxes. -- ~~Property~~ Land meeting the conditions for classification under G.S. 105-277.3 shall be taxed on the basis of the value of the ~~property~~ land for its present use. The difference between the taxes due on the present-use basis and the taxes ~~which~~ that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, ~~shall be~~ are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes, but shall not be payable, unless and until the property loses its eligibility for the benefit of this classification.~~ taxes. The taxes become due and payable when the land fails to meet any condition or requirement for classification. The tax for the fiscal year that opens in the calendar year in which ~~a disqualification occurs shall be~~ deferred taxes become due is computed as if the ~~property~~ land had

not been classified for that year, and taxes for the preceding three fiscal years ~~which~~ that have been deferred ~~shall immediately be~~ are immediately payable, together with interest ~~thereon~~ as provided in G.S. 105-360 for unpaid ~~taxes which shall accrue~~ taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land ~~loses its eligibility,~~ fails to meet a condition or requirement for classification, a determination shall be made of the amount of deferred taxes applicable to that part and that amount ~~shall become~~ becomes payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection ~~shall be~~ are extinguished."

Section 24. G.S. 105-277.2(4)b. reads as rewritten:

"b. A business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members ~~are all either a natural person~~ are all natural persons who meet one or more of the following conditions:

1. The member is actively engaged in the business of the ~~entity or a~~ entity.
2. The member is a relative of a member who is actively engaged in the business of the entity.
3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity."

Section 25. G.S. 105-333(14) reads as rewritten:

"(14) Public service company. -- A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, or a motor freight carrier company. ~~any other~~ The term also includes any company performing a public service that is regulated by the ~~Interstate Commerce Commission, the Federal Power Commission,~~ United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, a radio common carrier company as defined in G.S. 62-119(3), a cable television company, or a radio or television broadcasting company. ~~The term also includes a motor freight carrier company. For purposes of appraisal under this Article, the term also includes a pipeline company whether or not it performs a public service and whether~~

~~or not it is regulated by one of the regulatory agencies named in this subdivision.~~"

Section 26. G.S. 105-378(e) is repealed.

Section 27. G.S. 105-395(b) is repealed.

Section 28. G.S. 105-449.88(2) reads as rewritten:

"(2) Motor fuel sold to the federal ~~government.~~ government for its use."

Section 29. G.S. 105-449.105(d) is repealed.

Section 30. G.S. 105-449.110(b) reads as rewritten:

"(b) Interest. -- The rate of interest payable on a refund is the rate set in ~~G.S. 105-242.1(i).~~ G.S. 105-241.1(i). Interest accrues on a refund from the date that is 90 days after the later of the following:

(1) The date the application for refund was filed.

(2) The date the application for refund was due."

Section 30.1. G.S. 105-467(5) reads as rewritten:

"(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were ~~purchased with coupons~~ issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 31. G.S. 105-487 reads as rewritten:

"**§ 105-487. Use of additional tax revenue by ~~counties and municipalities.~~ counties.**

(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes in the next 10 fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes.

~~(b) Except as provided in subsection (c), forty percent (40%) of the revenue received by a municipality from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the municipality and thirty percent (30%) of the revenue received by a municipality from these taxes in the second five fiscal years in which the taxes are in effect in the municipality may be used by the municipality only for water and sewage capital outlay purposes or to retire any indebtedness incurred by the municipality for these purposes.~~

(c) The Local Government Commission may, upon petition by a ~~county or municipality, authorize a county or municipality~~ county, authorize the county to use part or all its tax revenue, otherwise required by subsection (a) ~~or (b)~~ of this section to be used for public ~~schools or water and sewage~~ school capital needs, for any lawful purpose. The petition shall be in the form of a resolution adopted by the ~~City Council or~~ Board of County Commissioners and transmitted to the Local Government Commission. The petition shall demonstrate that the county ~~or~~

~~municipality~~ can provide for its public school ~~or water and sewage~~ capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for ~~these purposes.~~ that purpose.

In making its decision, the Local Government Commission shall consider information contained in the petition concerning not only the public school ~~or water and sewage~~ capital needs, but also the other capital needs of the petitioning ~~county or municipality.~~ county. The Commission may also consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school ~~or water and sewage~~ capital needs of the petitioning county ~~or municipality~~ and the percentage of revenue otherwise restricted by subsection (a) ~~or (b)~~ of this section that may be used by the petitioning county ~~or municipality~~ for any lawful purpose.

Decisions of the Commission allowing counties ~~or municipalities~~ to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) ~~or (b)~~ of this section for any lawful purpose are final and shall continue in effect until the restrictions imposed by ~~those subsections~~ that subsection expire. A county ~~or municipality~~ whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(d) For purposes of determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a ~~county or municipality,~~ county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.

(e) A county ~~or municipality~~ may expend part or all of the revenue restricted for public school ~~or water and sewage~~ capital needs pursuant to ~~subsections (a) and (b)~~ subsection (a) of this section in the fiscal year in which the revenue is received, or the county ~~or municipality~~ may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes."

Section 32. G.S. 105-504 is repealed.

Section 33. G.S. 105-550 reads as rewritten:

"**§ 105-550. Definitions.**

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

(1) Authority. -- A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes.

(2) Long-term lease or rental. -- Defined in G.S. 105-187.1.

(3) Motorcycle. -- Defined in G.S. 20-4.01.

~~(4) Private passenger vehicle. -- Defined in G.S. 20-4.01.~~

(5) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the

following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, carpool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

(6) Short-term lease or rental. -- A lease or rental that is not a long-term lease or rental.

(7) U-drive-it passenger vehicle. -- Defined in G.S. 20-4.01."

Section 34. G.S. 105-551(a) reads as rewritten:

"(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting ~~private~~ U-drive-it passenger vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes."

Section 35. G.S. 105-552(b) reads as rewritten:

"(b) Collection. -- A tax levied by an Authority under this Article shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Article is to be added to the lease or rental price of a ~~private~~ U-drive-it passenger vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Article applies regardless of whether the retailer who leases or rents the ~~private~~ U-drive-it passenger vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under this Article must be paid to the Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the ~~private~~ U-drive-it passenger vehicle or motorcycle had elected to pay the optional gross receipts tax."

Section 36. S.L. 1997-139 is reenacted.

Section 37. Article 3 of Chapter 66 of the General Statutes is repealed.

Section 38(a). G.S. 105A-2(2)e. reads as rewritten:

"e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:

1. The ~~Aid to Families with Dependent Children~~ Work First Program ~~or the Aid to Families with Dependent Children -- Emergency Assistance Program, enabled by~~ provided in Article 2 of Chapter ~~108A, Article 2, Part 2.~~ 108A of the General Statutes.
2. The ~~Work First Cash Assistance~~ State-County Special Assistance for Adults Program ~~established pursuant to federal waivers received by the Department of Health and Human Services on February 5, 1996.~~ enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.
3. ~~The State-County Special Assistance for Adults Program, enabled by Chapter 108A, Article 2, Part 3.~~ A successor program of one of these programs.
4. ~~A successor program of one of these programs. of the General Statutes or~~"

Section 38(b). This section becomes effective January 1, 2000.

Section 39. G.S. 120-70.105 reads as rewritten:

"**§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.**

(a) Membership. -- The Revenue Laws Study Committee is established. The Committee consists of 16 members as follows:

(1) Eight members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Eight members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. -- Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until ~~his~~ a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

Section 40. Article 8 of Chapter 136 of the General Statutes is repealed.

PART II. CONFORM STATUTORY NOMENCLATURE.

Section 41. The designation of G.S. 105-103 through G.S. 105-113 as Division I of Article 2 of Chapter 105 of the General Statutes is eliminated, so that Article 2 contains G.S. 105-33 through G.S. 105-113 without any subdivision into Parts.

Section 42. Division I of Article 4 of Chapter 105 of the General Statutes is redesignated Part 1.

Section 43. Division IS of Article 4 of Chapter 105 of the General Statutes is redesignated Part 1A.

Section 44. Division II of Article 4 of Chapter 105 of the General Statutes is redesignated Part 2.

Section 45. Division III of Article 4 of Chapter 105 of the General Statutes is redesignated Part 3.

Section 46. Division V of Article 4 of Chapter 105 of the General Statutes is redesignated Part 5.

Section 47. Division I of Article 5 of Chapter 105 of the General Statutes is redesignated Part 1.

Section 48(a). G.S. 105-164.4 through G.S. 105-164.12A are merged into Division II of Article 5 of Chapter 105 of the General Statutes without subdivision into Parts, and the designations for Parts 1 through 4 of that Division are eliminated.

Section 48(b). Division II of Article 5 of Chapter 105 of the General Statutes is redesignated Part 2.

Section 49. Division III of Article 5 of Chapter 105 of the General Statutes is redesignated Part 3.

Section 50. Division IV of Article 5 of Chapter 105 of the General Statutes is redesignated Part 4.

Section 51. Division V of Article 5 of Chapter 105 of the General Statutes is redesignated Part 5.

Section 52. Division VI of Article 5 of Chapter 105 of the General Statutes is redesignated Part 6.

Section 53. Division VII of Article 5 of Chapter 105 of the General Statutes is redesignated Part 7.

Section 54. Division VIII of Article 5 of Chapter 105 of the General Statutes is redesignated Part 8.

Section 55. The title of Article 1 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 1.

~~Schedule A.~~ Inheritance Tax."

Section 56. The title of Article 2A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2A.

~~Schedule B-A.~~ Tobacco Products Tax."

Section 57. The title of Article 2B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2B.

~~Schedule B-B.~~ Soft Drink Tax."

Section 58. The title of Article 2C of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2C.

~~Schedule B-C.~~ Alcoholic Beverage License and Excise Taxes."

Section 59. The title of Article 2D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2D.

~~Schedule B D.~~ Unauthorized Substances Taxes."

Section 60. The title of Article 3 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3.

~~Schedule C.~~ Franchise Tax."

Section 61. The title of Article 4 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 4.

~~Schedule D.~~ Income Tax."

Section 62. The title of Article 5 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 5.

~~Schedule E.~~ Sales and Use Tax."

Section 63. The title of Article 6 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 6.

~~Schedule G.~~ Gift Taxes."

Section 64. The title of Article 8A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8A.

~~Schedule I A.~~ Gross Earnings Taxes <u>on Freight Line Companies</u> in Lieu of Ad Valorem Taxes."

Section 65. The title of Article 8B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8B.

~~Schedule I B.~~ Taxes upon Insurance Companies."

Section 66. The title of Article 8D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8D.

~~Schedule I D.~~ Taxation of Savings and Loan Associations."

Section 67. The title of Article 9 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 9.

~~Schedule J.~~ General Administration; Penalties and Remedies."

Section 68. The following sections of the General Statutes are amended by deleting the phrase "This Division" each time it occurs and substituting "This Part":

G.S. 105-130

G.S. 105-131(a)

G.S. 105-131.1(b)
G.S. 105-133
G.S. 105-160

Section 69. The following sections of the General Statutes are amended by deleting the phrase "this Division" or "this division" each time it occurs and substituting "this Part":

G.S. 105-130.1
G.S. 105-130.2
G.S. 105-130.4(l)(1)
G.S. 105-130.4(m)
G.S. 105-130.5(a)(2)
G.S. 105-130.5(c)
G.S. 105-130.6
G.S. 105-130.8
G.S. 105-130.11
G.S. 105-130.12
G.S. 105-130.15
G.S. 105-130.16
G.S. 105-130.18
G.S. 105-130.22
G.S. 105-130.23
G.S. 105-130.25
G.S. 105-130.34
G.S. 105-130.41
G.S. 105-130.42
G.S. 105-131(b) & (c)
G.S. 105-134
G.S. 105-134.1
G.S. 105-134.3
G.S. 105-134.6
G.S. 105-151.1
G.S. 105-151.2
G.S. 105-151.11(a)
G.S. 105-151.12
G.S. 105-151.18(a) & (b)
G.S. 105-151.20
G.S. 105-151.22
G.S. 105-151.23
G.S. 105-151.24
G.S. 105-151.26
G.S. 105-152(a) through (d)
G.S. 105-154
G.S. 105-156
G.S. 105-158

G.S. 105-160.1
G.S. 105-160.2
G.S. 105-160.4(a)
G.S. 105-160.5
G.S. 105-160.8
G.S. 105-163.010
G.S. 105-163.013
G.S. 105-163.014

Section 70. The following sections of the General Statutes are amended by deleting the phrase "Division I" each time it occurs and substituting the phrase "Part 1":
G.S. 105-131(b)(2)
G.S. 105-164.44C
G.S. 105-275.1(e)
G.S. 105-277.001(f)
G.S. 105-277.1A(f)

Section 71. The following sections of the General Statutes are amended by deleting the phrase "Division II" each time it occurs and substituting the phrase "Part 2":
G.S. 105-160.1
G.S. 105-160.4(e)
G.S. 105-163.011(b) & (b1)
G.S. 105-163.012
G.S. 105-163.15
G.S. 105-269.6
G.S. 105-275.2

Section 72. The following sections of the General Statutes are amended by deleting the phrase "Division V" each time it occurs and substituting the phrase "Part 5":
G.S. 105-116(a)
G.S. 105-120(a)
G.S. 105-120.2(f)
G.S. 105-122(d)

Section 73. G.S. 105-7 reads as rewritten:

"§ 105-7. Estate tax.

(a) A tax in addition to the inheritance tax imposed by this ~~schedule is hereby~~ Article is imposed upon the transfer of the net estate of every decedent, whether a resident or nonresident of the State, where the inheritance tax imposed by this ~~schedule~~ Article is less than the maximum state death tax credit allowed by the Federal Estate Tax Act as contained in the Code because of ~~said tax herein imposed.~~ the tax imposed by this Article. In such a case, the inheritance tax ~~provided for by this schedule~~ imposed by this Article shall be increased by an estate tax on the net estate so that the aggregate amount of tax due this State ~~shall be~~ equals the maximum

amount of credit allowed under ~~said~~ the Federal Estate Tax Act. ~~Said~~ This additional tax shall be paid out of the same funds as any other tax against the estate.

(b) ~~Where~~ If no tax is imposed by this ~~schedule~~ Article because of ~~the~~ exemptions ~~herein~~ or otherwise, and a tax is due the United States under the Federal Estate Tax Act, then a tax ~~shall be~~ is due this State equal to the maximum amount of the credit allowed under ~~said~~ the Federal Estate Tax Act.

(c) The administrative provisions of this ~~schedule,~~ Article, wherever applicable, shall apply to the collection of the tax imposed by this section. The amount of the tax as imposed by subsection (a) of this section shall be computed in full accordance with the Federal Estate Tax Act as contained in the Code."

Section 74. G.S. 105-8 reads as rewritten:

"§ 105-8. Treatment allowed for gift tax paid.

~~In case a tax has been imposed under Schedule G of the Revenue Act of 1937, or under subsequent acts,~~ If a tax has been imposed under Article 6 of this Chapter upon any gift, and thereafter upon the death of the donor, the amount ~~thereof~~ of the gift is required by ~~any provision of~~ this Article to be included in the gross estate of the decedent, then there shall be credited against and applied in reduction of the tax, which would otherwise be chargeable against the beneficiaries of the estate under ~~the provisions of~~ this Article, an amount equal to the tax paid with respect to ~~such~~ the gift. Any additional tax found to be due because of the inclusion of gifts in the gross estate of the ~~decedent, as provided herein,~~ decedent shall be a tax against the estate and shall be paid out of the same funds as any other tax against the estate."

Section 75. The introductory language of G.S. 105-9 reads as rewritten:

"§ 105-9. Deductions.

In determining the clear market value of property taxed under this Article, ~~or schedule,~~ the following deductions, and no others, shall be allowed:".

Section 76. G.S. 105-114(a)(2) reads as rewritten:

"(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which ~~such~~ these corporations receive from the government and laws of this State in doing business in this State.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in ~~such~~ the corporate form of organization; and if the corporation is not organized under the laws of this State, payment of these taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article ~~or schedule shall be~~ are for the fiscal year of the State in which the taxes become due; except that the taxes levied in G.S. 105-122 ~~shall be~~ are for the income year of the corporation in which the taxes become due.

G.S. 105-122 does not apply to street transportation systems taxed under G.S. 105-120.1 or holding companies taxed under G.S. 105-120.2. G.S. 105-122 applies to a corporation taxed

under another section of this Article only to the extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the corporation in other sections of this Article."

Section 77. G.S. 105-122(a) reads as rewritten:

"(a) Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this ~~Article or schedule,~~ Article, shall, on or before the fifteenth day of the third month following the end of its income year, ~~annually,~~ annually make and deliver to the Secretary ~~of Revenue in such form as he may prescribe~~ in the form prescribed by the Secretary a full, ~~accurate~~ accurate, and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing ~~such~~ the facts and information ~~as may be~~ required by the Secretary ~~of Revenue~~ as shown by the books and records of the corporation at the close of ~~such~~ the income year.

There shall be annexed to the return required by this subsection the affirmation of the officer signing the return in the following form: "Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. If prepared by a person other than taxpayer, ~~his~~ this affirmation is based on all information of which ~~he~~ the preparer has any knowledge."

Section 78. G.S. 105-127(b) is repealed.

Section 79. G.S. 105-130.26 reads as rewritten:

"§ 105-130.26. Credit ~~against corporate income tax~~ for conversion of industrial boiler to wood fuel.

~~Any corporation which~~ A corporation that modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one ~~which~~ that is capable of burning wood ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division,~~ Part an amount equal to fifteen percent (15%) of the installation and equipment cost of ~~such conversion; provided, that in order to secure~~ the conversion paid during the taxable year. In order to claim the credit allowed by this section, the taxpayer must own or control the business in which ~~such~~ the boiler or kiln is used at the time of ~~such conversion and payment in part or in whole for such installation and equipment must be made by the taxpayer during the tax year for which the credit is claimed; and the amount of credit allowed for any one income year shall be limited to fifteen percent (15%) of such costs paid during the year; and the~~ the conversion. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry production and that credit exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years."

Section 80. G.S. 105-130.27(a) reads as rewritten:

"(a) Credit Allowed. -- ~~Any corporation which~~ A corporation that constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division.~~ Part. Subject to the limitation provided in subsection (d) of this section, the amount of the credit shall be equal to twenty percent (20%) of the installation and construction costs of the ~~distillery,~~ distillery paid during the year preceding the taxable year, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of ~~construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source.~~ construction. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the ~~Secretary of Revenue.~~ Secretary. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer."

Section 81. G.S. 105-130.27A reads as rewritten:

"§ 105-130.27A. Credit ~~against corporate income tax~~ for construction of a peat facility.

(a) ~~Any corporation which~~ A corporation that constructs in North Carolina a facility ~~which~~ that uses peat as the feedstock for the production of a commercially manufactured energy source to replace petroleum, natural ~~gas or other~~ gas, or another nonrenewable energy ~~sources shall be~~ source is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty percent (20%) of the installation and equipment costs of ~~construction; provided, that the credit shall not be allowed~~ construction paid during the taxable year. No credit is allowed, however, to the extent that any of the cost of the system was provided by federal, State, or local grants. In order to secure the credit allowed by this section, the taxpayer must own or control ~~such~~ the facility at the time of ~~construction, and the credit allowed by this section shall not exceed~~ construction. The credit allowed by this section may not exceed the amount of ~~the~~ tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer.

(b) The amount of unused credit allowed under this section may be carried over for the next succeeding five years."

Section 82. G.S. 105-130.28(a) reads as rewritten:

"(a) Any corporation that constructs in North Carolina a facility for the production of photovoltaic equipment is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty-five percent (25%) of the installation and equipment costs of

~~construction. This credit shall not be allowed~~ construction paid during the taxable year. No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 83. G.S. 105-130.29 reads as rewritten:

"**§ 105-130.29. Credit ~~against corporate income tax~~ for construction of an olivine brick facility.**

(a) Any corporation that constructs in North Carolina a facility for the production of olivine bricks for thermal storage ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty percent (20%) of the installation and equipment costs of ~~construction. This credit shall not be allowed~~ construction paid during the taxable year. No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of aii credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) The amount of credit allowed under this section may be carried over for the next succeeding five years."

Section 84. G.S. 105-130.30 reads as rewritten:

"**§ 105-130.30. Credit ~~against corporate income tax~~ for construction of a methane gas facility.**

(a) Any corporation that constructs in North Carolina a facility for the production of methane gas from renewable biomass resources ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of ~~construction.~~ construction paid during the taxable year. The credit allowed under this section may not exceed two thousand five hundred dollars ($2,500) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "renewable biomass resources" means organic matter produced by terrestrial and aquatic plants and animals such as standing vegetation, aquatic crops, forestry and agricultural ~~residues~~ residues, and animal wastes that can be used for the production of energy."

Section 85. G.S. 105-130.31 reads as rewritten:

"§ 105-130.31. Credit ~~against corporate income tax~~ for installation of a wind energy device.

(a) Any corporation that constructs or installs a wind energy device for the production of electricity at a site located in this State ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of the wind energy ~~device.~~ device paid during the taxable year. The credit allowed under this section may not exceed one thousand dollars ($1,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "wind energy device" means equipment (and parts solely related to the functioning of the equipment) that, when installed on a site, transmits or uses wind energy to generate electricity."

Section 86. G.S. 105-130.32 reads as rewritten:

"§ 105-130.32. Credit ~~against corporate income tax~~ for installation of solar energy equipment for the production of heat or electricity in certain processes.

(a) Any corporation that constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of its business located in this State is allowed a credit against the tax imposed by this ~~Division~~ Part equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy ~~equipment.~~ equipment paid during the taxable year. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "solar energy equipment" means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun."

Section 87. G.S. 105-130.33(a) reads as rewritten:

"(a) Any corporation that constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of the hydroelectric ~~generator.~~ paid during the taxable year. The credit allowed under this

section may not exceed five thousand dollars ($5,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits allowable under this ~~Division,~~ Part, except payments of tax made by or on behalf of the taxpayer."

Section 88. G.S. 105-130.36(a) reads as rewritten:

"(a) Any corporation that purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty-five percent (25%) of the cost of the ~~equipment.~~ equipment paid during the taxable year. This credit may not exceed two thousand five hundred dollars ($2,500) for any ~~income~~ taxable year for any taxpayer. The credit may ~~only~~ be claimed only by the first purchaser of the equipment and may not be claimed by a corporation that purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. If the credit allowed by this section exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of credit allowable."

Section 89. G.S. 105-130.37(a) reads as rewritten:

"(a) Any corporation that grows a crop and permits the gleaning of the crop during the taxable year is ~~shall be~~ allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. No deduction is allowed under G.S. 105-130.5(b)(5) for the items for which a credit is claimed under this section. Any unused portion of the credit may be carried forward for the succeeding five years."

Section 90. G.S. 105-130.39 reads as rewritten:

"**§ 105-130.39. Credit for certain telephone subscriber line charges.**

(a) A corporation that provides local telephone service to low-income residential consumers at reduced rates pursuant to an order of the North Carolina Utilities Commission is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the difference ~~between.~~ between the following:

(1) The amount of receipts the corporation would have received during the taxable year from those low-income customers had the customers been charged the regular rates for local telephone service and ~~fees; and~~ fees.

(2) The amount billed those low-income customers for local telephone service during the taxable year.

(b) This credit is allowed only for a reduction in local telephone service rates and fees and is not allowed for any reduction in interstate subscriber line charges. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except tax payments made by or on behalf of the corporation."

Section 91. G.S. 105-134.7(a)(7) reads as rewritten:

"(7) The transitional adjustments provided in ~~Division I S~~ Part 1A of this Article shall be made with respect to a shareholder's pro rata share of S Corporation income."

Section 92. G.S. 105-151 reads as rewritten:

"**§ 105-151. Tax credits for income taxes paid to other states by individuals.**

(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this ~~Division~~ Part for income taxes imposed by and paid to another state or country on income taxed under this ~~Division,~~ Part, subject to the following conditions:

(1) The credit ~~shall be~~ is allowed only for taxes paid to another state or country on income derived from sources within that state or country that is taxed under its laws irrespective of the residence or domicile of the ~~recipient; provided,~~ recipient, except that whenever a taxpayer who is deemed to be a resident of this State under the provisions of this ~~Division~~ Part is deemed also to be a resident of another state or country under the laws of that state or country, the Secretary ~~may, in his discretion,~~ may allow a credit against the taxes imposed by this ~~Division~~ Part for taxes imposed by and paid to the other state or country on income taxed under this ~~Division.~~ Part.

(2) The fraction of the gross income, as calculated under the Code and adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed ~~shall be~~ is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed shall be filed with the Secretary ~~at, or prior to, the time~~ when the credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for the taxes so credited or refunded ~~shall be~~ is due and payable from the taxpayer and ~~shall be~~ is subject to the penalties and interest provided in Subchapter I of this Chapter."

Section 93. G.S 105-151.5 reads as rewritten:

"**§ 105-151.5. Credit for conversion of industrial boiler to wood fuel.**

A ~~person~~ taxpayer who modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one that is capable of burning wood ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to fifteen percent (15%) of the installation and equipment cost of the ~~conversion; provided, that in order to secure~~ conversion paid during the taxable year. In order to claim the credit allowed by this section, the taxpayer must own or control the business in which the boiler or kiln is used at the time of the ~~conversion and payment in part or in whole for the installation and equipment must be made by the taxpayer during the taxable year for which the credit is claimed. The amount of credit allowed for any one taxable year may not exceed fifteen percent (15%) of the costs paid during the year.~~ conversion. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry production and that credit exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years."

Section 94. G.S. 105-151.6(a) reads as rewritten:

"(a) Credit Allowed. -- Any person who constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division.~~ Part. Subject to the limitation provided in subsection (d) of this section, the amount of the credit ~~shall be equal to~~ is twenty percent (20%) of the installation and construction costs of the ~~distillery,~~ distillery paid during the year preceding the taxable year, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of ~~construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source.~~ construction. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the ~~Secretary of Revenue.~~ Secretary. The

credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer."

Section 95. G.S. 105-151.7(a) reads as rewritten:

"(a) A person who constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of the hydroelectric ~~generator.~~ generator paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 96. G.S. 105-151.8(a) reads as rewritten:

"(a) A person who constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of the person's business located in this State is allowed a credit against the tax imposed by this ~~Division~~ Part equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy ~~equipment.~~ equipment paid during the taxable year. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer. In no case ~~shall a tax credit be~~ is a credit allowed under both this section and G.S. 105-151.2."

Section 97. G.S. 105-151.9(a) reads as rewritten:

"(a) A person who constructs or installs a wind energy device for the production of electricity at a site located in this State ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of the wind energy ~~device.~~ device paid during the taxable year. The credit allowed under this section may not exceed one thousand dollars ($1,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed.

The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 98. G.S. 105-151.10(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who constructs in North Carolina a facility for the production of methane gas from renewable biomass resources shall be allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of ~~construction.~~ construction paid during the taxable year. The credit allowed under this section may not exceed two thousand five hundred dollars ($2,500) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 99. G.S. 105-151.11(c) reads as rewritten:

"(c) Limitations. -- No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code. The credit allowed by this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State."

Section 100. G.S. 105-151.13(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to twenty-five percent (25%) of the cost of the ~~equipment.~~ equipment paid during the taxable year. This credit may not exceed two thousand five hundred dollars ($2,500) for any taxable year. The credit may be claimed only by the first purchaser of the equipment and may not be claimed by a person who purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. If the credit allowed by this section exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the next succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of the credit allowable."

Section 101. G.S. 105-151.14(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who grows a crop and permits the gleaning of the crop during the taxable year shall be allowed as a credit against the tax imposed by this

~~Division~~ Part an amount equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. In order to claim the credit allowed under this section, the taxpayer must add the market price of the gleaned crop to taxable income as provided in G.S. 105-134.6(c). Any unused portion of the credit may be carried forward for the next succeeding five years."

Section 102. G.S. 105-151.18(d) reads as rewritten:

"(d) Limitations. -- A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 103. G.S. 105-151.21(a) reads as rewritten:

"(a) Credit. -- An individual engaged in the business of farming is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the amount of property taxes the individual paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. In addition, an individual shareholder of an S Corporation engaged in the business of farming is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the shareholder's pro rata share of the amount of property taxes the S Corporation paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. The total credit allowed under this section may not exceed one thousand dollars ($1,000) for the taxable year and may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer. To claim the credit, the taxpayer shall attach to the return a copy of the tax receipt for the property taxes for which credit is claimed. The receipt must indicate that the taxes have been paid and the amount and date of the payment."

Section 104. G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. -- A husband and wife shall file a single income tax return jointly if (i) their federal taxable income is determined on a joint federal return and (ii) both spouses are residents of this State or both spouses have North Carolina taxable income. Except as otherwise provided in this ~~Division,~~ Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this ~~Division.~~ Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this ~~Division~~ Part reduced by the sum of all credits ~~allowable under this Division~~ allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6013 of the Code, that spouse is not liable for the corresponding tax imposed by this ~~Division~~ Part attributable to the same substantial understatement by

the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

Section 105. G.S. 105-160.3(a) reads as rewritten:

"(a) Except as otherwise provided in this section, the credits allowed to an individual against the tax imposed by ~~Division II~~ Part 2 of this Article shall be allowed to the same extent to an estate or a trust against the tax imposed by this ~~Division.~~ Part. Any credit computed as a percentage of income received shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. No credit may exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the estate or trust."

Section 106. G.S. 105-164.3(22) reads as rewritten:

"(22) "Use tax" means ~~and includes~~ the tax imposed by Part ~~3 in Division II~~ 2 of this Article."

Section 107. G.S. 105-164.13(5) reads as rewritten:

"(5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered ~~wholesale or retail~~ retailers or wholesale merchants, for the purpose of resale except as modified by ~~Division I, G.S. 105-164.3, subdivision (23). Provided, however, this exemption shall~~ G.S. 105-164.3(23). This exemption does not extend to or include retail sales to users or consumers not for resale."

Section 108. G.S. 105-164.26 reads as rewritten:

"§ 105-164.26. Presumption that sales are taxable.

For the purpose of the proper administration of ~~this division of~~ this Article and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records as required ~~herein.~~ in this Article. It shall be prima facie presumed that tangible personal property sold by any person for delivery in this State, however made, and by carrier or otherwise, is sold for storage, ~~use~~ use, or other consumption in this State, and a like presumption shall apply to tangible personal property delivered ~~without~~ outside this State and brought to this State by the ~~purchaser thereof.~~ purchaser. "

Section 109. G.S. 105-228.1 reads as rewritten:

"§ 105-228.1. Defining taxes levied and assessed in this Article.

The purpose of this Article is to levy a fair and equal tax under authority of ~~Article V, Sec. 3 of the Constitution of North Carolina~~ Section 2(2) of Article V of the North Carolina Constitution and to provide a practical means for ascertaining and collecting it. The taxes levied and assessed in this ~~schedule shall be upon the gross earnings~~ Article are on gross earnings, as defined in the Article, and ~~shall be~~

are in lieu of ad valorem taxes upon the properties of ~~individuals, firms, or corporations so taxed herein.~~ persons taxed in this Article."

Section 110. G.S. 105-266(c) reads as rewritten:

"(c) Statute of Limitations. -- The period in which a refund must be demanded or discovered under this section is determined as follows:

(1) General Rule. -- No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later.

(2) Worthless Debts or Securities. -- Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in ~~Division II or III~~ Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:

a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.

b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.

(3) Capital Loss and Net Operating Loss Carrybacks. -- Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in ~~Division II or III~~ Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.

(4) Federal Determination. -- When a taxpayer files with the Secretary a return that reflects a federal determination and the return is filed within the required time, the period in which a refund must be demanded or discovered is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later."

Section 111. G.S. 105-309(d) reads as rewritten:

"(d) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by an abstract form approved by the Department of Revenue. Personal property shall also be listed to indicate which property, if any, is subject to a tax credit under ~~Division IV of Article 4 of this Chapter.~~ G.S. 105-151.21.

(1) If the assessor considers it necessary to obtain a complete listing of personal property, ~~he~~ the assessor may require a taxpayer to

submit additional information, inventories, or itemized lists of personal property.

(2) At the request of the assessor, the taxpayer shall furnish any information ~~he may have~~ the taxpayer has with respect to the true value of the personal property ~~he~~ the taxpayer is required to list."

Section 112. G.S. 105-366(b)(5) reads as rewritten:

"(5) The stock of goods or fixtures of a wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer, as defined in G.S. 105-164.3, in the hands of a purchaser or transferee thereof, or any other personal property of the purchaser or transferee of ~~such~~ the property, if the taxes on the goods or fixtures remain unpaid 30 days after the date of the sale or ~~transfer, but in such a case the~~ transfer. In the case of other personal property of the purchaser or transferee, the levy or attachment must be made within six months of the sale or transfer."

Section 113. G.S. 105-366(d) reads as rewritten:

"(d) Remedies against Sellers and Purchasers of Stocks of Goods or Fixtures of Wholesale ~~or Retail Merchants.~~ Merchants or Retailers. --

(1) Any wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer, as defined in G.S. 105-164.3, who sells or transfers the major part of ~~his~~ its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of ~~business or who goes out of business, shall:~~ business, or who goes out of business, must take the following actions:

a. At least 48 hours prior to the date of the pending sale, transfer, or termination of business, give notice ~~thereof~~ to the assessors and tax collectors of the taxing units in which ~~his~~ the business is ~~located; and~~ located.

b. Within 30 days of the sale, transfer, or termination of business, pay all taxes due or to become due on the transferred property on the first day of September of the current calendar year.

(2) Any person to whom the major part of the stock of goods, materials, supplies, or fixtures of a wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer is sold or transferred, other than in the ordinary course of business, or who becomes the successor in business of a wholesale ~~or retail merchant~~ merchant or retailer shall withhold from the purchase money paid to the merchant an amount sufficient to pay the taxes due or to become due on the transferred property on the first day of September of the current calendar year until the former owner or seller produces either a receipt from the tax collector showing that the taxes have been paid or a certificate

that no taxes are due. If the purchaser or successor in business fails to withhold a sufficient amount of the purchase money to pay the taxes as required by this subsection ~~(d)~~ and the taxes remain unpaid after the 30-day period allowed, ~~he shall be~~ the purchaser or successor is personally liable for the amount of the taxes ~~unpaid, and his~~ unpaid. This liability may be enforced by means of a civil action brought in the name of the taxing unit against ~~him~~ the purchaser or successor in an appropriate trial division of the General Court of Justice in the county in which the taxing unit is located.

(3) Whenever any wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer sells or transfers the major part of ~~his~~ its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or goes out of ~~business,~~ business and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid, the tax collector, to enforce collection of the unpaid taxes, ~~may:~~ may do any of the following:

a. Levy on or attach any personal property of the ~~seller; or~~ seller.

b. If the taxes remain unpaid 30 days after the date of the transfer or termination of business, levy on or attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business.

(4) In using the remedies provided in this ~~subsection (d),~~ subsection, the amount of taxes not yet determined shall be computed in accordance with G.S. 105-359, and any applicable discount shall be allowed."

PART III. EFFECTIVE DATE.

Section 114. Except as otherwise provided in this act, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1226
Finance Committee Substitute Adopted 6/11/98

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL TECHNICAL CHANGES.

Section 1(a). Article 8D of Chapter 105 of the General Statutes is repealed.

Section 1(b). G.S. 105-130.11(a)(2) reads as rewritten:

"(2) ~~Building and loan associations and savings and loan associations subject to tax under Article 8D of this Chapter; cooperative~~ Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes."

Section 1(c). G.S. 105-130.5(c) is amended by adding a new subdivision to read:

"(5) A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, to the extent included in federal taxable income."

Section 1(d). G.S. 105-228.24A is recodified as G.S. 105-130.43.

Section 1(e). G.S. 105-130.43, as recodified by this section, reads as rewritten:

"**§ 105-130.43. ~~Income tax credit for~~ Credit for savings and loan supervisory fees.**

Every savings and loan association is allowed a credit against the ~~income tax imposed on it under Article 4 of this Chapter~~ tax imposed by this Part for a taxable year equal to the amount of supervisory fees, paid by the association during the taxable year, that were assessed by the Administrator of the Savings Institutions Division of the Department of Commerce for the State fiscal year beginning ~~on or~~ during that taxable year. This credit may not exceed the amount of ~~income~~ tax ~~payable by the association~~ imposed by this Part for the taxable ~~year for which the credit is claimed,~~ year, reduced by the sum of all ~~income tax~~ credits allowed against the tax, except tax payments made by or on behalf of the ~~association. The supervisory fees shall not be an allowable deduction in determining taxable income for any association claiming the credit allowed under this section.~~ taxpayer. A taxpayer that claims the credit allowed under this section may not deduct the supervisory fees in determining taxable income."

Section 1 (f). G.S. 105-83(d) reads as rewritten:

"(d) This section does not apply to corporations liable for the tax levied under G.S. ~~105-102.3.~~ 105-102.3 or to savings and loan associations."

Section 1(g). G.S. 105-88(b) reads as rewritten:

"(b) ~~Nothing in this section shall be construed to~~ This section does not apply to banks, industrial banks, trust companies, ~~building~~ savings and loan associations, ~~or~~ cooperative credit unions, ~~nor shall it apply to~~ the business of negotiating loans on real estate as described in G.S. 105-41, ~~nor to~~ pawnbrokers lending or advancing money on specific articles of personal property, ~~nor to~~ or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. ~~It shall apply~~ This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of ~~such~~ the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect ~~same,~~ the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker ~~shall be~~ is required to obtain a privilege license under this section merely because ~~he advances his~~ the broker advances the broker's own funds and takes a security interest in real estate to secure ~~such~~ the advances and when, at the time of ~~such advance of his own funds, he~~ the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount ~~such~~ the obligation within the period specified in ~~said~~ the arrangement or extensions thereof; or when, at the time of the advance ~~of his own funds, he~~ the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of ~~said~~ the obligation and does sell the obligation within the period specified in ~~said~~ the arrangement or extensions thereof; or because ~~he advances his~~ the broker advances the broker's own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations

are essentially as described above ~~shall be~~ is required to obtain a privilege license under this section."

Section 1(h). G.S. 105-102.3 reads as rewritten:

"**§ 105-102.3. Banks.**

There is hereby imposed upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B or 54C of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, be organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, an annual privilege tax in the amount of thirty dollars ($30.00) for each one million dollars ($1,000,000) or fractional part thereof of total assets held as hereinafter provided. The assets upon which the tax is levied shall be determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities; provided, however, where a new bank commences operations within the State there shall be levied and paid an annual privilege tax of one hundred dollars ($100.00) until such bank shall have made four quarterly call reports of condition (consolidating domestic subsidiaries) for a single calendar year; provided further, however, where a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an in-state bank with one or more branches outside this State, the assets of the out-of-state bank or of the in-state bank upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the out-of-state bank or of the in-state bank which are employed outside this State. The tax imposed hereunder shall be for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. Counties, cities and towns shall not levy a license or privilege tax on the businesses taxed under this section, nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5."

Section 1(i). This section repeals any law that would otherwise exempt savings and loan associations, as defined in G.S. 54B-4, from the franchise tax imposed in Article 3 of Chapter 105 of the General Statutes.

Section 1(j). This section becomes effective for taxable years beginning on or after January 1, 1999.

Section 2. G.S. 105-17 is repealed.

Section 3. G.S. 105-25 is repealed.

Section 4. G.S. 105-130.5(a)(10) reads as rewritten:

"(10) The total amounts allowed under this ~~Article~~ Chapter during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this ~~Article~~ Chapter the apportionment factor used by it in determining the amount of its apportioned income."

Section 5. G.S. 105-131.1(b) reads as rewritten:

"(b) Each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, shall be taken into account by the shareholder in the manner and subject to the adjustments provided in ~~Division II~~ Parts 2 and 3 of this Article and section 1366 of the Code and shall be subject to the tax levied under ~~Division II~~ Parts 2 and 3 of this Article."

Section 6. G.S. 105-131.6 reads as rewritten:

"**§ 105-131.6. Distributions.**

(a) Subject to the provisions of subsection (c) of this section, a distribution made by an S Corporation with respect to its stock to a resident shareholder ~~shall be~~ is taxable to the shareholder as provided in ~~Division II~~ Parts 2 and 3 of this Article to the extent that the distribution is characterized as a dividend or as gain from the sale or exchange of property pursuant to section 1368 of the Code.

(b) Subject to the provisions of subsection (c) of this section, any distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period ~~shall not be~~ is not taxable to the shareholder as provided in ~~Division II~~ Parts 2 and 3 of this Article to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with section 1371(e) of the Code.

(c) In applying sections 1368 and 1371(e) of the Code to any distribution referred to in this section:

(1) The term "adjusted basis of the stock" means the adjusted basis of the shareholder's stock as determined under G.S. ~~105-131.3; and~~ 105-131.3.

(2) The accumulated adjustments account maintained for each resident shareholder ~~shall~~ must be equal to, and ~~shall be~~ adjusted in the same manner as, the corporation's accumulated adjustments account defined in section 1368(e)(1)(A) of the Code, except that:

a. The accumulated adjustments account shall be modified in the manner provided in G.S. ~~105-131.3(b)(1); and~~ 105-131.3(b)(1).

b. The amount of the ~~Corporation's~~ corporation's federal accumulated adjustments account that existed on the day this State began to measure the S Corporation shareholders' income by reference to the income of the S Corporation

~~shall be~~ is ignored and ~~shall be~~ is treated for purposes of ~~Divisions I and II of~~ this Article as additional accumulated earnings and profits of the corporation."

Section 7. G.S. 105-131.7(e) reads as rewritten:

"(e) Amounts paid to the Department on account of the corporation's shareholders under subsections (b) and (c) ~~shall~~ constitute payments on their behalf of the income tax imposed on them under ~~Division II~~ Parts 2 and 3 of this Article for the taxable period."

Section 8. G.S. 105-131.8 reads as rewritten:

"**§ 105-131.8. Tax credits.**

(a) For purposes of G.S. ~~105-151,~~ 105-151 and G.S. 105-160.4, each resident shareholder ~~shall be~~ is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state ~~which~~ that does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(b) ~~Each~~ Except as otherwise provided in G.S. 105-160.3, each shareholder of an S Corporation is allowed as a credit against the tax imposed by ~~Division II~~ Parts 2 and 3 of this Article an amount equal to the shareholder's pro rata share of the tax credits for which the S Corporation is eligible."

Section 9. G.S. 105-134.1(7b) is repealed.

Section 10. G.S. 105-160.3(b) reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

(1) G.S. 105-151. Tax credits for income taxes paid to other states by individuals.

(2) G.S. 105-151.11. Credit for child care and certain employment-related expenses.

(3) G.S. 105-151.18. Credit for the disabled.

(4) G.S. 105-151.24. Credit for children.

(5) G.S. 105-151.26. Credit for charitable contributions by nonitemizers."

Section 11. G.S. 105-163.3(a) reads as rewritten:

"(a) Requirement. -- Every payer who pays a contractor more than six hundred dollars ($600.00) during a calendar year shall deduct and withhold from compensation paid to ~~a~~ the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary."

Section 12. G.S. 105-163.3(b) reads as rewritten:

"(b) Exemptions. -- The withholding requirement does not apply to the following:

(1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.

(2) Compensation paid to an ordained or licensed member of the clergy.

(3) Compensation paid to an entity exempt from tax under G.S. 105-130.11."

Section 13. G.S. 105-163.3(e) reads as rewritten:

"(e) Records. -- If a payer does not withhold from payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer shall obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer shall obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer shall obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer shall obtain the partnership's address and taxpayer identification number. The payer shall retain this information with its records."

Section 13.1. G.S. 105-164.4(a)(5) reads as rewritten:

"(5) **(Effective until July 1, 1998)** The rate of three percent (3%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased ~~with coupons issued~~ under the Food Stamp Program, 7 U.S.C. § 51.

(5) **(Effective July 1, 1998)** The rate of two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased ~~with coupons issued~~ under the Food Stamp Program, 7 U.S.C. § 51."

Section 14. G.S. 105-164.13(11) reads as rewritten:

"(11) Any of the following fuel:

a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under ~~G.S. 105-449.105(c) or (d) or under~~ G.S. 105-449.107.

b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107."

Section 14.1. G.S. 105-164.13(38) reads as rewritten:

"(38) Food and other items lawfully purchased ~~with coupons issued~~ under the Food Stamp Program, 7 U.S.C. § 51, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Food Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Food Program."

Section 15. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. -- An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for ~~compensation, is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of Transportation, and is required by either federal agency to keep records according to generally accepted accounting principles (GAAP) or, in the case of a small certificated air carrier, to make reports of financial and operating statistics.~~ compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

Section 15.1. G.S. 105-187.6(a) reads as rewritten:

"(a) Full Exemptions. -- The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.

(2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale.

(3) To the same owner to reflect a change or correction in the owner's name.
(4) By will or intestacy.
(5) By a gift between a husband and wife, a parent and child, or a stepparent and a stepchild.
(6) By a distribution of ~~marital~~ property as a result of a divorce.
(7) To a handicapped person from the Department of Health and Human Services after the vehicle has been equipped by the Department for use by the handicapped.
(8) To a local board of education for use in the driver education program of a public school when the motor vehicle is transferred:
a. By a retailer and is to be transferred back to the retailer within 300 days after the transfer to the local board.
b. By a local board of education."

Section 16. G.S. 105-197 reads as rewritten:

"**§ 105-197. When return required; due date of tax and return.**

(a) When Return Required. -- Anyone who, during the calendar year, gives to a donee a gift of a future interest or one or more ~~gifts~~ taxable gifts whose total value exceeds the amount of the annual exclusion set in G.S. 105-188(d) must file a gift tax return, under oath or affirmation, with the Secretary on a form prescribed by the Secretary. For the purpose of this section, a taxable gift is a gift that is not exempt under G.S. 105-188(h) or (i).

(b) Due Date. -- The tax is due on April 15th following the end of the calendar year. A return must be filed on or before the due date of the tax. A taxpayer may ask the Secretary of Revenue for an extension of time for filing a return under G.S. 105-263."

Section 17. G.S. 105-228.5(d) reads as rewritten:

"(d) Tax Rates; Disposition. --
(1) Workers Compensation. -- The tax rate to be applied to gross premiums, or the equivalent thereof in the case of self-insurers, ~~collected~~ on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The net proceeds shall be credited to the General Fund.
(2) Other Insurance Contracts. -- The tax rate to be applied to gross premiums ~~collected~~ on all other insurance contracts issued by insurers shall be one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund.
(3) Additional Statewide Fire and Lightning Rate. -- An additional tax shall be applied to ~~amounts collected~~ gross premiums on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent (1.33%). Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in

Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

(4) Additional Local Fire and Lightning Rate. -- An additional tax shall be applied to ~~amounts collected~~ gross premiums on contracts of insurance applicable to fire and lightning coverage within fire districts at the rate of one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25.

(5) Article 65 Corporations. -- The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations shall be one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the General Fund."

Section 18. G.S. 105-228.10 reads as rewritten:

"§ 105-228.10. No additional local taxes.

~~No county, city, or town shall be allowed to impose any additional tax, license, or fee, other than ad valorem taxes, upon any insurance company or association paying the fees and taxes~~ No city or county may levy on a person subject to the tax levied in this ~~Article.~~ Article a privilege tax or a tax computed on the basis of gross premiums."

Section 19. G.S. 105-249.3 is repealed.

Section 20. G.S. 105-259(b)(3) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(3) Review by a tax official of another ~~state or the Internal Revenue Commissioner of the United States~~ jurisdiction to aid the ~~state or the Commissioner~~ jurisdiction in collecting a tax imposed by this ~~State, the other state, or the United States~~ State or the other jurisdiction if the laws of the other ~~state or the United States allow the state or the United States~~ jurisdiction allow it to provide similar tax information to a representative of this State."

Section 21. G.S. 105-264 reads as rewritten:

"§ 105-264. Effect of Secretary's interpretation of revenue laws.

It ~~shall be~~ is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules.

An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes ~~a rule or a bulletin,~~ an interpretation, a taxpayer who relied ~~upon the rule or bulletin~~ on it before it was changed is not liable for any penalty or

additional assessment on any tax that accrued before the ~~rule or bulletin~~ interpretation was changed and was not paid by reason of reliance upon the ~~rule or bulletin.~~ interpretation. If a taxpayer requests in writing specific advice from the Department and receives in response erroneous written advice, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent the advice was reasonably relied upon by the taxpayer and the penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.

This section does not prevent the Secretary from changing an interpretation and it does not prevent a change in an interpretation from applying on and after the effective date of the change."

Section 22. G.S. 105-277.3 reads as rewritten:

"**§ 105-277.3. Agricultural, horticultural, and forestland -- Classifications.**

(a) Classes Defined. -- The following classes of property are ~~hereby~~ designated special classes of property under authority of ~~Article V, Sec. 2(2)~~ Section 2(2) of Article V of the North Carolina Constitution and shall be appraised, ~~assessed and taxed as hereinafter provided.~~ assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. -- Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

(2) Horticultural land. -- Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have ~~either:~~ met the applicable minimum gross income requirement. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been

~~a.~~ ~~Been~~ used to produce evergreens intended for use as Christmas trees ~~and~~ must have met the ~~qualifying or~~ minimum gross income requirements established by the Department of Revenue for the ~~land; or~~

~~b.~~ ~~Produced~~ land. All other horticultural land must have produced an average gross income of at least one thousand

dollars ($1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. ~~Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products.~~

(3) Forestland. -- Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) Natural Person Ownership Requirements. -- In order to come within a classification described in ~~subdivision (a)(1), (2) or (3), above, the property must,~~ subsection (a) of this section, the land must, if owned by ~~natural persons,~~ a natural person, also satisfy one of the following conditions:

(1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust ~~which~~ that transferred the ~~property~~ land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. -- ~~If~~ In order to come within a classification described in subsection (a) of this section, the land must, if owned by a business entity or trust, ~~the property must~~ have been owned by the business entity or trust or by one or more of its ~~members, or by one or more of its creators in the case of a trust,~~ members or creators, respectively, for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed. ~~Notwithstanding the provisions of G.S. 105-277.2(4)b, a business entity qualifying for a classification described in G.S. 105-277.3 shall not lose the benefit of the classification by reason of the death of one of its members if the decedent's ownership passes to and remains in a relative of the decedent.~~

(b2) Exception to Ownership Requirements. -- ~~Property loses its eligibility for the classifications described in subsection (a) of this section if ownership of the property passes to anyone other than a relative of the owner or passes to or from a business entity or trust from or to anyone other than its members or its creators or beneficiaries, respectively, except that property does not lose its eligibility if both of the following conditions are met: (i) it~~ G.S. 105-277.4(c) provides that deferred taxes are payable if land fails to meet any condition or requirement for classification. Accordingly, if land fails to meet an ownership requirement due to a change of ownership, G.S. 105-277.4(c) applies. Despite this failure and the resulting liability for taxes under G.S. 105-277.4(c), the land may qualify for classification in the hands of the new owner if both of the following conditions are met, even if the new owner

does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land:

(1) The land was appraised at its present use value or was eligible for appraisal at its present use value ~~pursuant to that subsection~~ at the time title to the ~~property~~ land passed to the ~~present owner, and (ii)~~ ~~at~~ new owner.

(2) At the time title to the ~~property~~ land passed to the ~~present~~ new owner, the owner owned other ~~property~~ land classified under subsection (a).

~~The fact that property may retain its eligibility because the preceding two conditions were met does not affect any liability for deferred taxes under G.S. 105-277.4(c) if those taxes were otherwise due at the time title passed to the present owner.~~

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. -- ~~Enrollment~~ Land enrolled in the federal Conservation Reserve Program authorized by ~~Title XII of the Food Security Act of 1985 (Pub. L. 99-198), as amended, shall not preclude eligibility of land for present use value treatment solely on the grounds that the land is no longer~~ 16 U.S.C. § 1381 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program shall be assessed as agricultural land if it is planted in vegetation other than trees, or as ~~forest land~~ forestland if it is planted in trees.

(e) Exception for Turkey Disease. -- ~~Notwithstanding the provisions of subsection (a) of this section, agricultural~~ Agricultural land that meets all of the following conditions ~~does not lose its eligibility for present use value treatment solely on the grounds that it is no longer in actual production, it no longer meets the minimum income requirements, or both:~~ is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.

(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poult Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

(3) The land is otherwise eligible for present use value treatment."

Section 23. G.S. 105-277.4(c) reads as rewritten:

"(c) Deferred Taxes. -- ~~Property~~ Land meeting the conditions for classification under G.S. 105-277.3 shall be taxed on the basis of the value of the ~~property~~ land for its present use. The difference between the taxes due on the present-use basis and the taxes ~~which~~ that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, ~~shall be~~ are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The

difference in taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes, but shall not be payable, unless and until the property loses its eligibility for the benefit of this classification.~~ taxes. The taxes become due and payable when the land fails to meet any condition or requirement for classification. The tax for the fiscal year that opens in the calendar year in which ~~a disqualification occurs shall be~~ deferred taxes become due is computed as if the ~~property~~ land had not been classified for that year, and taxes for the preceding three fiscal years ~~which~~ that have been deferred ~~shall immediately be~~ are immediately payable, together with interest ~~thereon~~ as provided in G.S. 105-360 for unpaid ~~taxes which shall accrue~~ taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land ~~loses its eligibility,~~ fails to meet a condition or requirement for classification, a determination shall be made of the amount of deferred taxes applicable to that part and that amount ~~shall become~~ becomes payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection ~~shall be~~ are extinguished."

Section 24. G.S. 105-277.2(4)b. reads as rewritten:

"b. A business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members ~~are all either a natural person~~ are all natural persons who meet one or more of the following conditions:

1. The member is actively engaged in the business of the ~~entity or a~~ entity.
2. The member is a relative of a member who is actively engaged in the business of the entity.
3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity."

Section 25. G.S. 105-333(14) reads as rewritten:

"(14) Public service company. -- A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, or a motor freight carrier company. ~~any other~~ The term also includes any company performing a public service that is regulated by the ~~Interstate Commerce Commission, the Federal Power Commission,~~ United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term

does not include a water company, a radio common carrier company as defined in G.S. 62-119(3), a cable television company, or a radio or television broadcasting company. ~~The term also includes a motor freight carrier company. For purposes of appraisal under this Article, the term also includes a pipeline company whether or not it performs a public service and whether or not it is regulated by one of the regulatory agencies named in this subdivision.~~"

Section 26. G.S. 105-378(e) is repealed.

Section 27. G.S. 105-395(b) is repealed.

Section 28. G.S. 105-449.88(2) reads as rewritten:

"(2) Motor fuel sold to the federal ~~government.~~ government for its use."

Section 29. G.S. 105-449.105(d) is repealed.

Section 30. G.S. 105-449.110(b) reads as rewritten:

"(b) Interest. -- The rate of interest payable on a refund is the rate set in ~~G.S. 105-242.1(i).~~ G.S. 105-241.1(i). Interest accrues on a refund from the date that is 90 days after the later of the following:

(1) The date the application for refund was filed.

(2) The date the application for refund was due."

Section 30.1. G.S. 105-467(5) reads as rewritten:

"(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were ~~purchased with coupons~~ issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 31. G.S. 105-487 reads as rewritten:

"§ 105-487. Use of additional tax revenue by ~~counties and municipalities.~~ counties.

(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes in the next 10 fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes.

~~(b) Except as provided in subsection (c), forty percent (40%) of the revenue received by a municipality from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the municipality and thirty percent (30%) of the revenue received by a municipality from these taxes in the second five fiscal years in which the taxes are in effect in the municipality may be used by the municipality only for water and sewage capital outlay purposes or to retire any indebtedness incurred by the municipality for these purposes.~~

(c) The Local Government Commission may, upon petition by a ~~county or municipality, authorize a county or municipality~~ county, authorize the county to use part or all its tax revenue, otherwise required by subsection (a) ~~or (b)~~ of this section to be used for public ~~schools or water and sewage~~ school capital needs, for any lawful purpose. The petition shall be in the form of a resolution adopted by the ~~City Council or~~ Board of County Commissioners and transmitted to the Local Government Commission. The petition shall demonstrate that the county ~~or municipality~~ can provide for its public school ~~or water and sewage~~ capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for ~~these purposes.~~ that purpose.

In making its decision, the Local Government Commission shall consider information contained in the petition concerning not only the public school ~~or water and sewage~~ capital needs, but also the other capital needs of the petitioning ~~county or municipality.~~ county. The Commission may also consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school ~~or water and sewage~~ capital needs of the petitioning county ~~or municipality~~ and the percentage of revenue otherwise restricted by subsection (a) ~~or (b)~~ of this section that may be used by the petitioning county ~~or municipality~~ for any lawful purpose.

Decisions of the Commission allowing counties ~~or municipalities~~ to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) ~~or (b)~~ of this section for any lawful purpose are final and shall continue in effect until the restrictions imposed by ~~those subsections~~ that subsection expire. A county ~~or municipality~~ whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(d) For purposes of determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a ~~county or municipality,~~ county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.

(e) A county ~~or municipality~~ may expend part or all of the revenue restricted for public school ~~or water and sewage~~ capital needs pursuant to ~~subsections (a) and (b)~~ subsection (a) of this section in the fiscal year in which the revenue is received, or the county ~~or municipality~~ may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes."

Section 32. G.S. 105-504 is repealed.

Section 33. G.S. 105-550 reads as rewritten:

"**§ 105-550. Definitions.**

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

(1) Authority. -- A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes.
(2) Long-term lease or rental. -- Defined in G.S. 105-187.1.
(3) Motorcycle. -- Defined in G.S. 20-4.01.
~~(4) Private passenger vehicle. -- Defined in G.S. 20-4.01.~~
(5) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, carpool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.
(6) Short-term lease or rental. -- A lease or rental that is not a long-term lease or rental.
(7) U-drive-it passenger vehicle. -- Defined in G.S. 20-4.01."

Section 34. G.S. 105-551(a) reads as rewritten:

"(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting ~~private~~ U-drive-it passenger vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes."

Section 35. G.S. 105-552(b) reads as rewritten:

"(b) Collection. -- A tax levied by an Authority under this Article shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Article is to be added to the lease or rental price of a ~~private~~ U-drive-it passenger vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Article applies regardless of whether the retailer who leases or rents the ~~private~~ U-drive-it passenger vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under this Article must be paid to the Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under

G.S. 105-187.5 if the retailer who leases or rents the ~~private~~ U-drive-it passenger vehicle or motorcycle had elected to pay the optional gross receipts tax."

Section 36. S.L. 1997-139 is reenacted.

Section 37. Article 3 of Chapter 66 of the General Statutes is repealed.

Section 38(a). G.S. 105A-2(2)e. reads as rewritten:

"e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:

1. The ~~Aid to Families with Dependent Children~~ Work First Program ~~or the Aid to Families with Dependent Children -- Emergency Assistance Program, enabled by~~ provided in Article 2 of Chapter ~~108A, Article 2, Part 2.~~ 108A of the General Statutes.
2. The ~~Work First Cash Assistance~~ State-County Special Assistance for Adults Program ~~established pursuant to federal waivers received by the Department of Health and Human Services on February 5, 1996.~~ enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.
3. ~~The State-County Special Assistance for Adults Program, enabled by Chapter 108A, Article 2, Part 3.~~ A successor program of one of these programs.
4. ~~A successor program of one of these programs.~~

~~of the General Statutes or~~"

Section 38(b). This section becomes effective January 1, 2000.

Section 39. G.S. 120-70.105 reads as rewritten:

"**§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.**

(a) Membership. -- The Revenue Laws Study Committee is established. The Committee consists of 16 members as follows:

(1) Eight members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Eight members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. -- Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until ~~his~~ a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

Section 40. Article 8 of Chapter 136 of the General Statutes is repealed.

PART II. CONFORM STATUTORY NOMENCLATURE.

Section 41. The designation of G.S. 105-103 through G.S. 105-113 as Division I of Article 2 of Chapter 105 of the General Statutes is eliminated, so that Article 2 contains G.S. 105-33 through G.S. 105-113 without any subdivision into Parts.

Section 42. Division I of Article 4 of Chapter 105 of the General Statutes is redesignated Part 1.

Section 43. Division IS of Article 4 of Chapter 105 of the General Statutes is redesignated Part 1A.

Section 44. Division II of Article 4 of Chapter 105 of the General Statutes is redesignated Part 2.

Section 45. Division III of Article 4 of Chapter 105 of the General Statutes is redesignated Part 3.

Section 46. Division V of Article 4 of Chapter 105 of the General Statutes is redesignated Part 5.

Section 47. Division I of Article 5 of Chapter 105 of the General Statutes is redesignated Part 1.

Section 48(a). G.S. 105-164.4 through G.S. 105-164.12A are merged into Division II of Article 5 of Chapter 105 of the General Statutes without subdivision into Parts, and the designations for Parts 1 through 4 of that Division are eliminated.

Section 48(b). Division II of Article 5 of Chapter 105 of the General Statutes is redesignated Part 2.

Section 49. Division III of Article 5 of Chapter 105 of the General Statutes is redesignated Part 3.

Section 50. Division IV of Article 5 of Chapter 105 of the General Statutes is redesignated Part 4.

Section 51. Division V of Article 5 of Chapter 105 of the General Statutes is redesignated Part 5.

Section 52. Division VI of Article 5 of Chapter 105 of the General Statutes is redesignated Part 6.

Section 53. Division VII of Article 5 of Chapter 105 of the General Statutes is redesignated Part 7.

Section 54. Division VIII of Article 5 of Chapter 105 of the General Statutes is redesignated Part 8.

Section 55. The title of Article 1 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 1.

~~Schedule A.~~ Inheritance Tax."

Section 56. The title of Article 2A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2A.
~~Schedule B-A.~~ Tobacco Products Tax."

Section 57. The title of Article 2B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2B.
~~Schedule B-B.~~ Soft Drink Tax."

Section 58. The title of Article 2C of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2C.
~~Schedule B-C.~~ Alcoholic Beverage License and Excise Taxes."

Section 59. The title of Article 2D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2D.
~~Schedule B-D.~~ Unauthorized Substances Taxes."

Section 60. The title of Article 3 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3.
~~Schedule C.~~ Franchise Tax."

Section 61. The title of Article 4 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 4.
~~Schedule D.~~ Income Tax."

Section 62. The title of Article 5 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 5.
~~Schedule E.~~ Sales and Use Tax."

Section 63. The title of Article 6 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 6.
~~Schedule G.~~ Gift Taxes."

Section 64. The title of Article 8A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8A.
~~Schedule I-A.~~ Gross Earnings Taxes <u>on Freight Line Companies</u>
in Lieu of Ad Valorem Taxes."

Section 65. The title of Article 8B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8B.
~~Schedule I-B.~~ Taxes upon Insurance Companies."

Section 66. The title of Article 8D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8D.
~~Schedule I-D.~~ Taxation of Savings and Loan
Associations."

Section 67. The title of Article 9 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 9.

~~Schedule J.~~ General Administration; Penalties and Remedies."

Section 68. The following sections of the General Statutes are amended by deleting the phrase "This Division" each time it occurs and substituting "This Part":

G.S. 105-130
G.S. 105-131(a)
G.S. 105-131.1(b)
G.S. 105-133
G.S. 105-160

Section 69. The following sections of the General Statutes are amended by deleting the phrase "this Division" or "this division" each time it occurs and substituting "this Part":

G.S. 105-130.1
G.S. 105-130.2
G.S. 105-130.4(l)(1)
G.S. 105-130.4(m)
G.S. 105-130.5(a)(2)
G.S. 105-130.5(c)
G.S. 105-130.6
G.S. 105-130.8
G.S. 105-130.11
G.S. 105-130.12
G.S. 105-130.15
G.S. 105-130.16
G.S. 105-130.18
G.S. 105-130.22
G.S. 105-130.23
G.S. 105-130.25
G.S. 105-130.34
G.S. 105-130.41
G.S. 105-130.42
G.S. 105-131(b) & (c)
G.S. 105-134
G.S. 105-134.1
G.S. 105-134.3
G.S. 105-134.6
G.S. 105-151.1
G.S. 105-151.2
G.S. 105-151.11(a)
G.S. 105-151.12

G.S. 105-151.18(a) & (b)
G.S. 105-151.20
G.S. 105-151.22
G.S. 105-151.23
G.S. 105-151.24
G.S. 105-151.26
G.S. 105-152(a) through (d)
G.S. 105-154
G.S. 105-156
G.S. 105-158
G.S. 105-160.1
G.S. 105-160.2
G.S. 105-160.4(a)
G.S. 105-160.5
G.S. 105-160.8
G.S. 105-163.010
G.S. 105-163.013
G.S. 105-163.014

Section 70. The following sections of the General Statutes are amended by deleting the phrase "Division I" each time it occurs and substituting the phrase "Part 1":

G.S. 105-131(b)(2)
G.S. 105-164.44C
G.S. 105-275.1(e)
G.S. 105-277.001(f)
G.S. 105-277.1A(f)

Section 71. The following sections of the General Statutes are amended by deleting the phrase "Division II" each time it occurs and substituting the phrase "Part 2":

G.S. 105-160.1
G.S. 105-160.4(e)
G.S. 105-163.011(b) & (b1)
G.S. 105-163.012
G.S. 105-163.15
G.S. 105-269.6
G.S. 105-275.2

Section 72. The following sections of the General Statutes are amended by deleting the phrase "Division V" each time it occurs and substituting the phrase "Part 5":

G.S. 105-116(a)
G.S. 105-120(a)
G.S. 105-120.2(f)
G.S. 105-122(d)

Section 73. G.S. 105-7 reads as rewritten:

"**§ 105-7. Estate tax.**

(a) A tax in addition to the inheritance tax imposed by this ~~schedule is hereby~~ Article is imposed upon the transfer of the net estate of every decedent, whether a resident or nonresident of the State, where the inheritance tax imposed by this ~~schedule~~ Article is less than the maximum state death tax credit allowed by the Federal Estate Tax Act as contained in the Code because of ~~said tax herein imposed.~~ the tax imposed by this Article. In such a case, the inheritance tax ~~provided for by this schedule~~ imposed by this Article shall be increased by an estate tax on the net estate so that the aggregate amount of tax due this State ~~shall be~~ equals the maximum amount of credit allowed under ~~said~~ the Federal Estate Tax Act. ~~Said~~ This additional tax shall be paid out of the same funds as any other tax against the estate.

(b) ~~Where~~ If no tax is imposed by this ~~schedule~~ Article because of ~~the~~ exemptions ~~herein~~ or otherwise, and a tax is due the United States under the Federal Estate Tax Act, then a tax ~~shall be~~ is due this State equal to the maximum amount of the credit allowed under ~~said~~ the Federal Estate Tax Act.

(c) The administrative provisions of this ~~schedule,~~ Article, wherever applicable, shall apply to the collection of the tax imposed by this section. The amount of the tax as imposed by subsection (a) of this section shall be computed in full accordance with the Federal Estate Tax Act as contained in the Code."

Section 74. G.S. 105-8 reads as rewritten:

"**§ 105-8. Treatment allowed for gift tax paid.**

~~In case a tax has been imposed under Schedule G of the Revenue Act of 1937, or under subsequent acts,~~ If a tax has been imposed under Article 6 of this Chapter upon any gift, and thereafter upon the death of the donor, the amount ~~thereof~~ of the gift is required by ~~any provision of~~ this Article to be included in the gross estate of the decedent, then there shall be credited against and applied in reduction of the tax, which would otherwise be chargeable against the beneficiaries of the estate under ~~the provisions of~~ this Article, an amount equal to the tax paid with respect to ~~such~~ the gift. Any additional tax found to be due because of the inclusion of gifts in the gross estate of the ~~decedent, as provided herein,~~ decedent shall be a tax against the estate and shall be paid out of the same funds as any other tax against the estate."

Section 75. The introductory language of G.S. 105-9 reads as rewritten:

"**§ 105-9. Deductions.**

In determining the clear market value of property taxed under this Article, ~~or schedule,~~ the following deductions, and no others, shall be allowed:".

Section 76. G.S. 105-114(a)(2) reads as rewritten:

"(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which ~~such~~ these corporations receive from the government and laws of this State in doing business in this State.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in ~~such~~ the corporate form of organization; and if the corporation is not organized under the

laws of this State, payment of these taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article ~~or schedule shall be~~ are for the fiscal year of the State in which the taxes become due; except that the taxes levied in G.S. 105-122 ~~shall be~~ are for the income year of the corporation in which the taxes become due.

G.S. 105-122 does not apply to street transportation systems taxed under G.S. 105-120.1 or holding companies taxed under G.S. 105-120.2. G.S. 105-122 applies to a corporation taxed under another section of this Article only to the extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the corporation in other sections of this Article."

Section 77. G.S. 105-122(a) reads as rewritten:

"(a) Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this ~~Article or schedule,~~ Article, shall, on or before the fifteenth day of the third month following the end of its income year, ~~annually,~~ annually make and deliver to the Secretary ~~of Revenue in such form as he may prescribe~~ in the form prescribed by the Secretary a full, ~~accurate~~ accurate, and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing ~~such~~ the facts and information ~~as may be~~ required by the Secretary ~~of Revenue~~ as shown by the books and records of the corporation at the close of ~~such~~ the income year.

There shall be annexed to the return required by this subsection the affirmation of the officer signing the return in the following form: "Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. If prepared by a person other than taxpayer, ~~his~~ this affirmation is based on all information of which ~~he~~ the preparer has any knowledge."

Section 78. G.S. 105-127(b) is repealed.

Section 79. G.S. 105-130.26 reads as rewritten:

"§ 105-130.26. Credit ~~against corporate income tax~~ for conversion of industrial boiler to wood fuel.

~~Any corporation which~~ A corporation that modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one ~~which~~ that is capable of burning wood ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division,~~ Part an amount equal to fifteen percent (15%) of the installation and equipment cost of ~~such conversion; provided, that in order to secure~~ the conversion paid during the taxable year. In order to claim the credit allowed by this section, the taxpayer must own or control the business in which ~~such~~ the boiler or kiln is used at the time of ~~such conversion and payment in part or in whole for such installation and equipment must be made by the taxpayer during the tax year for which the credit is claimed; and the amount of credit allowed for any one income~~

~~year shall be limited to fifteen percent (15%) of such costs paid during the year; and~~ ~~the~~ the conversion. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry production and that credit exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years."

Section 80. G.S. 105-130.27(a) reads as rewritten:

"(a) Credit Allowed. -- ~~Any corporation which~~ A corporation that constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division.~~ Part. Subject to the limitation provided in subsection (d) of this section, the amount of the credit shall be equal to twenty percent (20%) of the installation and construction costs of the ~~distillery,~~ distillery paid during the year preceding the taxable year, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of ~~construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source.~~ construction. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the ~~Secretary of Revenue.~~ Secretary. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer."

Section 81. G.S. 105-130.27A reads as rewritten:

"**§ 105-130.27A. Credit ~~against corporate income tax~~ for construction of a peat facility.**

(a) ~~Any corporation which~~ A corporation that constructs in North Carolina a facility ~~which~~ that uses peat as the feedstock for the production of a commercially manufactured energy source to replace petroleum, natural ~~gas or other~~ gas, or another nonrenewable energy ~~sources shall be~~ source is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty percent (20%) of the installation and equipment costs of ~~construction; provided, that the credit shall not be allowed~~ construction paid during the taxable year. No credit is allowed, however, to the extent that any of the cost of the system was provided by federal, State, or local grants. In order to secure the credit allowed by this section, the taxpayer must own or control ~~such~~ the facility at the time of ~~construction, and the credit allowed by this section shall not exceed~~ construction. The credit allowed by this section may not

exceed the amount of ~~the~~ tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer.

(b) The amount of unused credit allowed under this section may be carried over for the next succeeding five years."

Section 82. G.S. 105-130.28(a) reads as rewritten:

"(a) Any corporation that constructs in North Carolina a facility for the production of photovoltaic equipment is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty-five percent (25%) of the installation and equipment costs of ~~construction. This credit shall not be allowed~~ construction paid during the taxable year. No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 83. G.S. 105-130.29 reads as rewritten:

"§ 105-130.29. Credit ~~against corporate income tax~~ for construction of an olivine brick facility.

(a) Any corporation that constructs in North Carolina a facility for the production of olivine bricks for thermal storage ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty percent (20%) of the installation and equipment costs of ~~construction. This credit shall not be allowed~~ construction paid during the taxable year. No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) The amount of credit allowed under this section may be carried over for the next succeeding five years."

Section 84. G.S. 105-130.30 reads as rewritten:

"§ 105-130.30. Credit ~~against corporate income tax~~ for construction of a methane gas facility.

(a) Any corporation that constructs in North Carolina a facility for the production of methane gas from renewable biomass resources ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of ~~construction.~~ construction paid during the taxable year. The credit allowed under this section may not exceed two thousand five hundred dollars ($2,500) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the

taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "renewable biomass resources" means organic matter produced by terrestrial and aquatic plants and animals such as standing vegetation, aquatic crops, forestry and agricultural ~~residues~~ residues, and animal wastes that can be used for the production of energy."

Section 85. G.S. 105-130.31 reads as rewritten:

"**§ 105-130.31. Credit ~~against corporate income tax~~ for installation of a wind energy device.**

(a) Any corporation that constructs or installs a wind energy device for the production of electricity at a site located in this State ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of the wind energy ~~device.~~ device paid during the taxable year. The credit allowed under this section may not exceed one thousand dollars ($1,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "wind energy device" means equipment (and parts solely related to the functioning of the equipment) that, when installed on a site, transmits or uses wind energy to generate electricity."

Section 86. G.S. 105-130.32 reads as rewritten:

"**§ 105-130.32. Credit ~~against corporate income tax~~ for installation of solar energy equipment for the production of heat or electricity in certain processes.**

(a) Any corporation that constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of its business located in this State is allowed a credit against the tax imposed by this ~~Division~~ Part equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy ~~equipment.~~ equipment paid during the taxable year. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "solar energy equipment" means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun."

Section 87. G.S. 105-130.33(a) reads as rewritten:

"(a) Any corporation that constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of the hydroelectric ~~generator.~~ paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits allowable under this ~~Division,~~ Part, except payments of tax made by or on behalf of the taxpayer."

Section 88. G.S. 105-130.36(a) reads as rewritten:

"(a) Any corporation that purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty-five percent (25%) of the cost of the ~~equipment.~~ equipment paid during the taxable year. This credit may not exceed two thousand five hundred dollars ($2,500) for any ~~income~~ taxable year for any taxpayer. The credit may ~~only~~ be claimed only by the first purchaser of the equipment and may not be claimed by a corporation that purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. If the credit allowed by this section exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of credit allowable."

Section 89. G.S. 105-130.37(a) reads as rewritten:

"(a) Any corporation that grows a crop and permits the gleaning of the crop during the taxable year is ~~shall be~~ allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. No deduction is allowed under G.S. 105-130.5(b)(5) for the items for which a credit is claimed under this section. Any unused portion of the credit may be carried forward for the succeeding five years."

Section 90. G.S. 105-130.39 reads as rewritten:

"§ 105-130.39. Credit for certain telephone subscriber line charges.

(a) A corporation that provides local telephone service to low-income residential consumers at reduced rates pursuant to an order of the North Carolina Utilities Commission is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the difference ~~between:~~ between the following:

(1) The amount of receipts the corporation would have received during the taxable year from those low-income customers had the customers been charged the regular rates for local telephone service and ~~fees; and~~ fees.

(2) The amount billed those low-income customers for local telephone service during the taxable year.

(b) This credit is allowed only for a reduction in local telephone service rates and fees and is not allowed for any reduction in interstate subscriber line charges. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except tax payments made by or on behalf of the corporation."

Section 91. G.S. 105-134.7(a)(7) reads as rewritten:

"(7) The transitional adjustments provided in ~~Division I-S~~ Part 1A of this Article shall be made with respect to a shareholder's pro rata share of S Corporation income."

Section 92. G.S. 105-151 reads as rewritten:

"**§ 105-151. Tax credits for income taxes paid to other states by individuals.**

(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this ~~Division~~ Part for income taxes imposed by and paid to another state or country on income taxed under this ~~Division,~~ Part, subject to the following conditions:

(1) The credit ~~shall be~~ is allowed only for taxes paid to another state or country on income derived from sources within that state or country that is taxed under its laws irrespective of the residence or domicile of the ~~recipient; provided,~~ recipient, except that whenever a taxpayer who is deemed to be a resident of this State under the provisions of this ~~Division~~ Part is deemed also to be a resident of another state or country under the laws of that state or country, the Secretary ~~may, in his discretion,~~ may allow a credit against the taxes imposed by this ~~Division~~ Part for taxes imposed by and paid to the other state or country on income taxed under this ~~Division.~~ Part.

(2) The fraction of the gross income, as calculated under the Code and adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed ~~shall be~~ is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed shall be filed with the Secretary ~~at, or prior to, the time~~ when the credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for the taxes so credited or refunded ~~shall be~~ is due and payable from the taxpayer and ~~shall be~~ is subject to the penalties and interest provided in Subchapter I of this Chapter."

Section 93. G.S 105-151.5 reads as rewritten:

"§ 105-151.5. Credit for conversion of industrial boiler to wood fuel.

A ~~person~~ taxpayer who modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one that is capable of burning wood ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to fifteen percent (15%) of the installation and equipment cost of the ~~conversion; provided, that in order to secure~~ conversion paid during the taxable year. In order to claim the credit allowed by this section, the taxpayer must own or control the business in which the boiler or kiln is used at the time of the ~~conversion and payment in part or in whole for the installation and equipment must be made by the taxpayer during the taxable year for which the credit is claimed. The amount of credit allowed for any one taxable year may not exceed fifteen percent (15%) of the costs paid during the year.~~ conversion. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry production and that credit exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years."

Section 94. G.S. 105-151.6(a) reads as rewritten:

"(a) Credit Allowed. -- Any person who constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division.~~ Part. Subject to the limitation provided in subsection (d) of this section, the amount of the credit ~~shall be equal to~~ is twenty percent (20%) of the installation and construction costs of the ~~distillery,~~ distillery paid during the year preceding the taxable year, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the

time of ~~construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source.~~ construction. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the ~~Secretary of Revenue.~~ Secretary. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer."

Section 95. G.S. 105-151.7(a) reads as rewritten:

"(a) A person who constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of the hydroelectric ~~generator.~~ generator paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 96. G.S. 105-151.8(a) reads as rewritten:

"(a) A person who constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of the person's business located in this State is allowed a credit against the tax imposed by this ~~Division~~ Part equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy ~~equipment.~~ equipment paid during the taxable year. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer. In no case ~~shall a tax credit be~~ is a credit allowed under both this section and G.S. 105-151.2."

Section 97. G.S. 105-151.9(a) reads as rewritten:

"(a) A person who constructs or installs a wind energy device for the production of electricity at a site located in this State ~~shall be~~ is allowed as a credit against the

tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of the wind energy ~~device.~~ device paid during the taxable year. The credit allowed under this section may not exceed one thousand dollars ($1,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 98. G.S. 105-151.10(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who constructs in North Carolina a facility for the production of methane gas from renewable biomass resources shall be allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of ~~construction.~~ construction paid during the taxable year. The credit allowed under this section may not exceed two thousand five hundred dollars ($2,500) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 99. G.S. 105-151.11(c) reads as rewritten:

"(c) Limitations. -- No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code. The credit allowed by this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State."

Section 100. G.S. 105-151.13(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to twenty-five percent (25%) of the cost of the ~~equipment.~~ equipment paid during the taxable year. This credit may not exceed two thousand five hundred dollars ($2,500) for any taxable year. The credit may be claimed only by the first purchaser of the equipment and may not be claimed by a person who purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. If the credit allowed by

this section exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the next succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of the credit allowable."

Section 101. G.S. 105-151.14(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who grows a crop and permits the gleaning of the crop during the taxable year shall be allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. In order to claim the credit allowed under this section, the taxpayer must add the market price of the gleaned crop to taxable income as provided in G.S. 105-134.6(c). Any unused portion of the credit may be carried forward for the next succeeding five years."

Section 102. G.S. 105-151.18(d) reads as rewritten:

"(d) Limitations. -- A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 103. G.S. 105-151.21(a) reads as rewritten:

"(a) Credit. -- An individual engaged in the business of farming is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the amount of property taxes the individual paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. In addition, an individual shareholder of an S Corporation engaged in the business of farming is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the shareholder's pro rata share of the amount of property taxes the S Corporation paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. The total credit allowed under this section may not exceed one thousand dollars ($1,000) for the taxable year and may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer. To claim the credit, the taxpayer shall attach to the return a copy of the tax receipt for the property taxes for which credit is claimed. The receipt must indicate that the taxes have been paid and the amount and date of the payment."

Section 104. G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. -- A husband and wife shall file a single income tax return jointly if (i) their federal taxable income is determined on a joint federal return and (ii) both spouses are residents of this State or both spouses have North Carolina taxable income. Except as otherwise provided in this ~~Division,~~ Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the

tax imposed by this ~~Division.~~ Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this ~~Division~~ Part reduced by the sum of all credits ~~allowable under this Division~~ allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6013 of the Code, that spouse is not liable for the corresponding tax imposed by this ~~Division~~ Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

Section 105. G.S. 105-160.3(a) reads as rewritten:

"(a) Except as otherwise provided in this section, the credits allowed to an individual against the tax imposed by ~~Division II~~ Part 2 of this Article shall be allowed to the same extent to an estate or a trust against the tax imposed by this ~~Division.~~ Part. Any credit computed as a percentage of income received shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. No credit may exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the estate or trust."

Section 106. G.S. 105-164.3(22) reads as rewritten:

"(22) "Use tax" means ~~and includes~~ the tax imposed by Part ~~3 in Division II~~ 2 of this Article."

Section 107. G.S. 105-164.13(5) reads as rewritten:

"(5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered ~~wholesale or retail~~ retailers or wholesale merchants, for the purpose of resale except as modified by ~~Division I, G.S. 105-164.3, subdivision (23). Provided, however, this exemption shall~~ G.S. 105-164.3(23). This exemption does not extend to or include retail sales to users or consumers not for resale."

Section 108. G.S. 105-164.26 reads as rewritten:

"**§ 105-164.26. Presumption that sales are taxable.**

For the purpose of the proper administration of ~~this division of~~ this Article and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records as required ~~herein.~~ in this Article. It shall be prima facie presumed that tangible personal property sold by any person for delivery in this State, however made, and by carrier or otherwise, is sold for storage, ~~use~~ use, or other consumption in this State, and a like presumption shall apply to tangible personal property delivered ~~without~~ outside this State and brought to this State by the ~~purchaser thereof.~~ purchaser. "

Section 109. G.S. 105-228.1 reads as rewritten:

"**§ 105-228.1. Defining taxes levied and assessed in this Article.**

The purpose of this Article is to levy a fair and equal tax under authority of ~~Article V, Sec. 3 of the Constitution of North Carolina~~ Section 2(2) of Article V of the North Carolina Constitution and to provide a practical means for ascertaining and collecting it. The taxes levied and assessed in this ~~schedule shall be upon the gross earnings~~ Article are on gross earnings, as defined in the Article, and ~~shall be~~ are in lieu of ad valorem taxes upon the properties of ~~individuals, firms, or corporations so taxed herein.~~ persons taxed in this Article."

Section 110. G.S. 105-266(c) reads as rewritten:

"(c) Statute of Limitations. -- The period in which a refund must be demanded or discovered under this section is determined as follows:

(1) General Rule. -- No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later.

(2) Worthless Debts or Securities. -- Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in ~~Division II or III~~ Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:

a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.

b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.

(3) Capital Loss and Net Operating Loss Carrybacks. -- Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in ~~Division II or III~~ Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.

(4) Federal Determination. -- When a taxpayer files with the Secretary a return that reflects a federal determination and the return is filed within the required time, the period in which a refund must be demanded or discovered is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later."

Section 111. G.S. 105-309(d) reads as rewritten:

"(d) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by an abstract form approved by the Department of Revenue. Personal property shall also be listed to indicate which property, if any, is subject to a tax credit under ~~Division IV of Article 4 of this Chapter.~~ G.S. 105-151.21.

(1) If the assessor considers it necessary to obtain a complete listing of personal property, ~~he~~ the assessor may require a taxpayer to submit additional information, inventories, or itemized lists of personal property.

(2) At the request of the assessor, the taxpayer shall furnish any information ~~he may have~~ the taxpayer has with respect to the true value of the personal property ~~he~~ the taxpayer is required to list."

Section 112. G.S. 105-366(b)(5) reads as rewritten:

"(5) The stock of goods or fixtures of a wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer, as defined in G.S. 105-164.3, in the hands of a purchaser or transferee thereof, or any other personal property of the purchaser or transferee of ~~such~~ the property, if the taxes on the goods or fixtures remain unpaid 30 days after the date of the sale or ~~transfer, but in such a case the~~ transfer. In the case of other personal property of the purchaser or transferee, the levy or attachment must be made within six months of the sale or transfer."

Section 113. G.S. 105-366(d) reads as rewritten:

"(d) Remedies against Sellers and Purchasers of Stocks of Goods or Fixtures of Wholesale ~~or Retail Merchants.~~ Merchants or Retailers. --

(1) Any wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer, as defined in G.S. 105-164.3, who sells or transfers the major part of ~~his~~ its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of ~~business or who goes out of business, shall:~~ business, or who goes out of business, must take the following actions:

a. At least 48 hours prior to the date of the pending sale, transfer, or termination of business, give notice ~~thereof~~ to the assessors and tax collectors of the taxing units in which ~~his~~ the business is ~~located; and~~ located.

b. Within 30 days of the sale, transfer, or termination of business, pay all taxes due or to become due on the transferred property on the first day of September of the current calendar year.

(2) Any person to whom the major part of the stock of goods, materials, supplies, or fixtures of a wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer is sold or transferred, other than in the ordinary course of

business, or who becomes the successor in business of a wholesale ~~or retail merchant~~ merchant or retailer shall withhold from the purchase money paid to the merchant an amount sufficient to pay the taxes due or to become due on the transferred property on the first day of September of the current calendar year until the former owner or seller produces either a receipt from the tax collector showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser or successor in business fails to withhold a sufficient amount of the purchase money to pay the taxes as required by this subsection ~~(d)~~ and the taxes remain unpaid after the 30-day period allowed, ~~he shall be~~ the purchaser or successor is personally liable for the amount of the taxes ~~unpaid, and his~~ unpaid. This liability may be enforced by means of a civil action brought in the name of the taxing unit against ~~him~~ the purchaser or successor in an appropriate trial division of the General Court of Justice in the county in which the taxing unit is located.

(3) Whenever any wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer sells or transfers the major part of ~~his~~ its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or goes out of ~~business,~~ business and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid, the tax collector, to enforce collection of the unpaid taxes, ~~may:~~ may do any of the following:

a. Levy on or attach any personal property of the ~~seller; or~~ seller.

b. If the taxes remain unpaid 30 days after the date of the transfer or termination of business, levy on or attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business.

(4) In using the remedies provided in this ~~subsection (d),~~ subsection, the amount of taxes not yet determined shall be computed in accordance with G.S. 105-359, and any applicable discount shall be allowed."

PART III. EFFECTIVE DATE.

Section 114. Except as otherwise provided in this act, this act is effective when it becomes law.

Cindy Brooks (Finance Committee Clerk)

From: Martha Harris (Bill Drafting)
Sent: Thursday, June 25, 1998 2:03 PM
To: Cindy Brooks (Finance Committee Clerk)
Subject: Revenue Laws Technical Changes

Here is the summary. There is a pcs which I will get to you as soon as it is ready. thanks, Martha

SB 1226 - Revenue
s Tech Changes Ho

EXPLANATION OF SENATE BILL 1226:
Proposed House Committee Substitute
Revenue Laws Technical Changes

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: June 25, 1998
SPONSOR: Senator Cochrane

Senate Bill 1226 is a recommendation of the Revenue Laws Study Committee and makes numerous technical and clarifying changes to the revenue laws and related statutes. The following table provides a section-by-section analysis of the proposed changes The only proposed change to the Senate version is Section 13.1, indicated in bold.

PART I. GENERAL TECHNICAL CHANGES

Section	Explanation
1	Recodifies the corporate income and franchise taxes on savings institutions. These entities currently pay tax under Article 8D of Chapter 105. The taxes are identical to the income and franchise taxes paid by other corporations, with two adjustments. This section moves the taxation of savings institutions from Article 8D to the regular corporate income and franchise taxes in Articles 3 and 4. The two adjustments are retained. In addition, a general exemption in Article 8D has been transferred to the relevant privilege tax statutes: G.S. 105-83, G.S. 105-88, and G.S. 105-102.3. This technical change has been reviewed and approved by the Bankers Association, which represents savings institutions.
2 - 3	Repeals obsolete provisions of the inheritance tax.
4	Conforms cross-reference to corporate tax credits to reflect that some credits are in other Articles of the Revenue Act.
5 - 8	Makes conforming changes to Subchapter S Corporation law to reflect the fact that trusts may now be shareholders.
9	Repeals an individual income tax definition for a term that is no longer used in the individual income tax law.
10	Adds cross-reference to two individual income tax credits that do not apply to estates and trusts.
11	Corrects grammar.
12 - 13	Clarifies that withholding is not required on payments to tax-exempt entities.
13.1	**Removes cross-references to soft drink excise tax, which has been**

repealed effective July 1, 1999.

13.2 Removes reference to type of payment for food purchased under the Food Stamp Program, because counties are beginning to use a system in which a type of credit card will be used in lieu of food stamps or coupons.

14 Removes references to sales tax applying to two types of motor fuel for which motor fuel tax refunds are allowed, because refunds are not made on these types of motor fuel (accidental mixes and fuel sold to marinas).

14.1 Removes reference to type of payment for food purchased under the Food Stamp Program, because counties are beginning to use a system in which a type of credit card will be used in lieu of food stamps or coupons.

15 Modifies the definition of interstate carrier for purposes of sales tax refunds to reflect the deregulation of the industry.

15.1 Makes a conforming change to reflect a change under the Equitable Distribution Laws that now provides for the distribution of marital property and divisible property.

16 Provides that a gift tax return is not required for gifts that are exempt from tax: gifts to charity and gifts between spouses. The 1997 federal tax act made a similar change to the federal gift tax, which formerly required returns for gifts to charity above $10,000.

17 Removes incorrect language describing the calculation of the gross premiums tax.

18 Clarifies insurance company tax exemption language. G.S. 105-228.10 was enacted in 1945 to provide that local governments may not levy additional taxes on insurers and other entities subject to the gross premiums tax. This section rewrites the statute to state that cities and counties are prohibited from levying a privilege license tax or a gross premiums tax on entities subject to gross premiums tax. The vague language of the statute is rewritten to clarify that insurance companies are not exempt from local sales taxes, local meals taxes, and other similar taxes that the General Assembly has authorized for local governments since this statute was enacted in 1945. Insurance companies currently pay these taxes and the terms of the tax statutes make it clear that they are not exempt.

19 Deletes an individual income tax exemption that is no longer needed because federal law exempts the same income and our law piggybacks the federal law.

20 Provides that tax information may be shared on a reciprocal basis with tax officials from jurisdictions outside the United States, as required by the International Fuel Tax Agreement.

21 Clarifies that taxpayers may rely upon all interpretations published by the Department of Revenue to the same extent as provided under current law

	only for specified types of interpretations.
22 - 24	Remove ambiguities in the use value property tax law that were created unintentionally when these statutes were rewritten and reorganized in 1995. The rewrite created potential, although strained, interpretations that deferred taxes were no longer required to be paid in some or in many cases where the law has always intended for them to be paid. These sections clarify that the law with respect to "rollback" of deferred taxes was not restricted by the 1995 rewrite. They also make further clarifying changes to the language.
25	Revises definition of public service company to reflect deregulation of carriers and to conform to Institute of Government interpretation that regulation requirement applies only to catch-all category of "any other company performing a public service."
26 - 27	Repeal two property tax provisions that have expired.
28	Clarifies that motor fuel sold to the federal government is exempt only if sold for use by the federal government.
29	Repeals a provision allowing refunds for motor fuel tax paid by marinas. Federal law no longer requires marinas to pay tax on motor fuel they purchase, so refunds are no longer necessary.
30	Corrects an incorrect cross-reference.
30.1	Removes reference to type of payment for food purchased under the Food Stamp Program, because counties are beginning to use a system in which a type of credit card will be used in lieu of food stamps or coupons.
31 - 32	Deletes provisions that have expired.
33 - 35	Corrects incorrect term describing short-term rental vehicles.
36	Reenacts a law modifying historic rehabilitation tax credits. The law was not roll called. Although the law expands the credits, in certain instances it could postpone part of the tax benefit allowed under prior law.
37	Repeals an obsolete tax on consigned candy products.
38	Amends the Setoff Debt Collection Act to reflect the new names given to public assistance programs by the 1997 welfare reform legislation, and to remove excess verbiage that resulted from a redlining error.
39	Conforms the structure of the Revenue Laws Study Committee statute to fit the requirements of the General Assembly's new computer system, and corrects gender-specific language.
40	Repeals list of cross-references to Highway Bond Acts. The list is incomplete and serves no purpose.

PART II. CONFORM STATUTORY NOMENCLATURE

Section	Explanation
41 - 54	Change from "Division" to "Part" the name of the subdivisions within Articles of Chapter 105 of the General Statutes, in order to be consistent with all other General Statutes. The new computer statutory database software will function better with consistent nomenclature.
55 - 67	Eliminate the term "Schedule" used as an additional name for Articles in Chapter 105 of the General Statutes, in order to be consistent with all other General Statutes. The new computer statutory database software will function better with consistent nomenclature.
68 - 113	Change cross-references to "Divisions" and "Schedules" to "Parts" and "Articles," respectively.

PART III. EFFECTIVE DATE

Section	Explanation
114	Provides that the act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1226 (Second Edition)
SHORT TITLE: Revenue Laws Technical Changes

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund		($90,000)	($95,000)	($100,000)	($105.000)
Public School Building Capital Fund		$90,000	$95,000	$100,000	$105.000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Section 1 becomes effective for taxable years beginning on or after January 1, 1999. The remainder of the bill is effective when it becomes law.

BILL SUMMARY: The bill makes technical and conforming changes to the revenue laws and related statutes.

ASSUMPTIONS AND METHODOLOGY: Except for Section 1, this bill has no revenue impact. Section 1 recodifies the corporate income and franchise taxes on savings institutions. These entities currently pay tax under Article 8D of Chapter 105. The taxes are identical to the income and franchise taxes paid by other corporations, with two adjustments. This section moves the taxation of savings institutions from Article 8D to the regular corporate income and franchise taxes in Articles 3 and 4. The two adjustments are retained.

Under G.S. 115C-546.1, a portion of the corporate income tax is earmarked for the Public School Capital Building Fund. Monies in the fund are distributed to counties on a per average daily membership basis to be used for public school capital outlay projects. Because Savings and Loans pay income tax under a separate Article, no part of their income tax goes to the Public School Building Capital Fund. When they begin to pay the identical tax under the general corporate income tax, rather than a separate Article, part of their income tax that would otherwise go to the General Fund will go to the Public School Building Capital Fund.

The estimate for the first year cost of earmarking was provided by the Department of Revenue. A growth rate of 5% was used for future years.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: David Crotts
APPROVED BY: Tom Covington

DATE: June 8, 1998

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1226

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1226-ARB-1 Page 1 of __

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title []
S1226-PCS9758-LC

Representative_____

moves to amend the bill on page 15, line 3, by deleting subsection "(e)" and substituting subsection "(c)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 1226 Amendment No. _____
(to be filled in by Principal Clerk)

(Rep.) Sen.) Hackney

moves to amend the bill on page 8, line 41,

by ~~inserting after "marital" the words~~ "~~m~~ deleting ~~"marital."~~ and substituting ~~"marital or divisible"~~.

by rewriting the line to read:

"(6) By a distribution of ~~a~~ marital or divisible property incident to a marital separation or divorce."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1226
Finance Committee Substitute Adopted 6/11/98
Proposed Committee Substitute S1226-PCS9761-LC

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL TECHNICAL CHANGES.

Section 1(a). Article 8D of Chapter 105 of the General Statutes is repealed.

Section 1(b). G.S. 105-130.11(a)(2) reads as rewritten:

"(2) ~~Building and loan associations and savings and loan associations subject to tax under Article 8D of this Chapter; cooperative~~ Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes."

Section 1(c). G.S. 105-130.5(c) is amended by adding a new subdivision to read:

"(5) A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, to the extent included in federal taxable income."

Section 1(d). G.S. 105-228.24A is recodified as G.S. 105-130.43.

Section 1(e). G.S. 105-130.43, as recodified by this section, reads as rewritten:

"**§ 105-130.43. ~~Income tax credit for~~ Credit for savings and loan supervisory fees.**

Every savings and loan association is allowed a credit against the ~~income tax imposed on it under Article 4 of this Chapter~~ tax imposed by this Part for a taxable year equal to the amount of supervisory fees, paid by the association during the taxable year, that were assessed by the Administrator of the Savings Institutions Division of the Department of Commerce for the State fiscal year beginning ~~on or~~ during that taxable year. This credit may not exceed the amount of ~~income~~ tax ~~payable by the association~~ imposed by this Part for the taxable ~~year for which the credit is claimed,~~ year, reduced by the sum of all ~~income tax~~ credits allowed against the tax, except tax payments made by or on behalf of the ~~association. The supervisory fees shall not be an allowable deduction in determining taxable income for any association claiming the credit allowed under this section.~~ taxpayer. A taxpayer that claims the credit allowed under this section may not deduct the supervisory fees in determining taxable income."

Section 1 (f). G.S. 105-83(d) reads as rewritten:

"(d) This section does not apply to corporations liable for the tax levied under G.S. ~~105-102.3.~~ 105-102.3 or to savings and loan associations."

Section 1(g). G.S. 105-88(b) reads as rewritten:

"(b) ~~Nothing in this section shall be construed to~~ This section does not apply to banks, industrial banks, trust companies, ~~building~~ savings and loan associations, ~~or~~ cooperative credit unions, ~~nor shall it apply to~~ the business of negotiating loans on real estate as described in G.S. 105-41, ~~nor to~~ pawnbrokers lending or advancing money on specific articles of personal property, ~~nor to~~ or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. ~~It shall apply~~ This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of ~~such~~ the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect ~~same,~~ the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker ~~shall be~~ is required to obtain a privilege license under this section merely because ~~he advances his~~ the broker advances the broker's own funds and takes a security interest in real estate to secure ~~such~~ the advances and when, at the time of ~~such advance of his own funds, he~~ the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount ~~such~~ the obligation within the period specified in ~~said~~ the arrangement or extensions thereof; or when, at the time of the advance ~~of his own funds, he~~ the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of ~~said~~ the obligation and does sell the obligation within the period specified in ~~said~~ the arrangement or extensions thereof; or because ~~he advances his~~ the broker advances the broker's own funds in

temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above ~~shall be~~ is required to obtain a privilege license under this section."

Section 1(h). G.S. 105-102.3 reads as rewritten:

"**§ 105-102.3. Banks.**

There is hereby imposed upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B or 54C of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, be organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, an annual privilege tax in the amount of thirty dollars ($30.00) for each one million dollars ($1,000,000) or fractional part thereof of total assets held as hereinafter provided. The assets upon which the tax is levied shall be determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities; provided, however, where a new bank commences operations within the State there shall be levied and paid an annual privilege tax of one hundred dollars ($100.00) until such bank shall have made four quarterly call reports of condition (consolidating domestic subsidiaries) for a single calendar year; provided further, however, where a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an in-state bank with one or more branches outside this State, the assets of the out-of-state bank or of the in-state bank upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the out-of-state bank or of the in-state bank which are employed outside this State. The tax imposed hereunder shall be for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. Counties, cities and towns shall not levy a license or privilege tax on the businesses taxed under this section, nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5."

Section 1(i). This section repeals any law that would otherwise exempt savings and loan associations, as defined in G.S. 54B-4, from the franchise tax imposed in Article 3 of Chapter 105 of the General Statutes.

Section 1(j). This section becomes effective for taxable years beginning on or after January 1, 1999.

Section 2. G.S. 105-17 is repealed.

Section 3. G.S. 105-25 is repealed.

Section 4. G.S. 105-130.5(a)(10) reads as rewritten:

"(10) The total amounts allowed under this ~~Article~~ Chapter during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this ~~Article~~ Chapter the apportionment factor used by it in determining the amount of its apportioned income."

Section 5. G.S. 105-131.1(b) reads as rewritten:

"(b) Each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, shall be taken into account by the shareholder in the manner and subject to the adjustments provided in ~~Division II~~ Parts 2 and 3 of this Article and section 1366 of the Code and shall be subject to the tax levied under ~~Division II~~ Parts 2 and 3 of this Article."

Section 6. G.S. 105-131.6 reads as rewritten:

"§ 105-131.6. Distributions.

(a) Subject to the provisions of subsection (c) of this section, a distribution made by an S Corporation with respect to its stock to a resident shareholder ~~shall be~~ is taxable to the shareholder as provided in ~~Division II~~ Parts 2 and 3 of this Article to the extent that the distribution is characterized as a dividend or as gain from the sale or exchange of property pursuant to section 1368 of the Code.

(b) Subject to the provisions of subsection (c) of this section, any distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period ~~shall not be~~ is not taxable to the shareholder as provided in ~~Division II~~ Parts 2 and 3 of this Article to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with section 1371(e) of the Code.

(c) In applying sections 1368 and 1371(e) of the Code to any distribution referred to in this section:

(1) The term "adjusted basis of the stock" means the adjusted basis of the shareholder's stock as determined under G.S. ~~105-131.3; and~~ 105-131.3.

(2) The accumulated adjustments account maintained for each resident shareholder ~~shall~~ must be equal to, and ~~shall be~~ adjusted in the same manner as, the corporation's accumulated adjustments account defined in section 1368(e)(1)(A) of the Code, except that:

a. The accumulated adjustments account shall be modified in the manner provided in G.S. ~~105-131.3(b)(1); and~~ 105-131.3(b)(1).

b. The amount of the ~~Corporation's~~ corporation's federal accumulated adjustments account that existed on the day this State began to measure the S Corporation shareholders'

income by reference to the income of the S Corporation ~~shall be~~ is ignored and ~~shall be~~ is treated for purposes of ~~Divisions I and II of~~ this Article as additional accumulated earnings and profits of the corporation."

Section 7. G.S. 105-131.7(e) reads as rewritten:

"(e) Amounts paid to the Department on account of the corporation's shareholders under subsections (b) and (c) ~~shall~~ constitute payments on their behalf of the income tax imposed on them under ~~Division II~~ Parts 2 and 3 of this Article for the taxable period."

Section 8. G.S. 105-131.8 reads as rewritten:

"**§ 105-131.8. Tax credits.**

(a) For purposes of G.S. ~~105-151,~~ 105-151 and G.S. 105-160.4, each resident shareholder ~~shall be~~ is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state ~~which~~ that does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(b) ~~Each~~ Except as otherwise provided in G.S. 105-160.3, each shareholder of an S Corporation is allowed as a credit against the tax imposed by ~~Division II~~ Parts 2 and 3 of this Article an amount equal to the shareholder's pro rata share of the tax credits for which the S Corporation is eligible."

Section 9. G.S. 105-134.1(7b) is repealed.

Section 10. G.S. 105-160.3(b) reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

(1) G.S. 105-151. Tax credits for income taxes paid to other states by individuals.

(2) G.S. 105-151.11. Credit for child care and certain employment-related expenses.

(3) G.S. 105-151.18. Credit for the disabled.

(4) G.S. 105-151.24. Credit for children.

(5) G.S. 105-151.26. Credit for charitable contributions by nonitemizers."

Section 11. G.S. 105-163.3(a) reads as rewritten:

"(a) Requirement. -- Every payer who pays a contractor more than six hundred dollars ($600.00) during a calendar year shall deduct and withhold from compensation paid to ~~a~~ the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary."

Section 12. G.S. 105-163.3(b) reads as rewritten:

"(b) Exemptions. -- The withholding requirement does not apply to the following:

(1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.

(2) Compensation paid to an ordained or licensed member of the clergy.

(3) Compensation paid to an entity exempt from tax under G.S. 105-130.11."

Section 13. G.S. 105-163.3(e) reads as rewritten:

"(e) Records. -- If a payer does not withhold from payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer shall obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer shall obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer shall obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer shall obtain the partnership's address and taxpayer identification number. The payer shall retain this information with its records."

Section 13.1(a). G.S. 105-164.3(16)f. reads as rewritten:

"f. The sales price of tangible personal property sold through a coin-operated vending machine, other than closed-container soft drinks ~~subject to excise tax under Article 2B of this Chapter~~ or tobacco products, is considered to be fifty percent (50%) of the total amount for which the property is sold in the vending machine."

Section 13.1(b). G.S. 105-259(b)(15) reads as rewritten:

"(15) To exchange information concerning a tax imposed by Articles 2A, ~~2B,~~ 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department."

Section 13.1(c). G.S. 105-267 reads as rewritten:

"**§ 105-267. Taxes to be paid; suits for recovery of taxes.**

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper officer, and that payment shall be without prejudice to any defense of rights the person may have regarding the tax. At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter,

may sue the Secretary in the courts of the State for the amount demanded. The protest period for a tax levied in Article 2A, ~~2B,~~ 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is one year after payment.

The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it is determined that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section."

Section 13.1(d). This section becomes effective July 1, 1999.

Section 13.2. G.S. 105-164.4(a)(5) reads as rewritten:

"(5) The rate of two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased ~~with coupons issued~~ under the Food Stamp Program, 7 U.S.C. § 51."

Section 14. G.S. 105-164.13(11) reads as rewritten:

"(11) Any of the following fuel:

a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under ~~G.S. 105-449.105(c) or (d) or under~~ G.S. 105-449.107.

b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107."

Section 14.1. G.S. 105-164.13(38) reads as rewritten:

"(38) Food and other items lawfully purchased ~~with coupons issued~~ under the Food Stamp Program, 7 U.S.C. § 51, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Food Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Food Program."

Section 15. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. -- An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for ~~compensation, is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of Transportation, and is required by either federal agency to keep records according to generally accepted accounting principles (GAAP) or, in the case of a small certificated air carrier, to make reports~~

~~of financial and operating statistics.~~ compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

Section 15.1. G.S. 105-187.6(a) reads as rewritten:

"(a) Full Exemptions. -- The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.

(2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale.

(3) To the same owner to reflect a change or correction in the owner's name.

(4) By will or intestacy.

(5) By a gift between a husband and wife, a parent and child, or a stepparent and a stepchild.

(6) ~~By a distribution of marital property as a result of a divorce.~~ By a distribution of marital or divisible property incident to a marital separation or divorce.

(7) To a handicapped person from the Department of Health and Human Services after the vehicle has been equipped by the Department for use by the handicapped.

(8) To a local board of education for use in the driver education program of a public school when the motor vehicle is transferred:

a. By a retailer and is to be transferred back to the retailer within 300 days after the transfer to the local board.

b. By a local board of education."

Section 16. G.S. 105-197 reads as rewritten:

"**§ 105-197. When return required; due date of tax and return.**

(a) When Return Required. -- Anyone who, during the calendar year, gives to a donee a gift of a future interest or one or more ~~gifts~~ taxable gifts whose total value exceeds the amount of the annual exclusion set in G.S. 105-188(d) must file a gift tax return, under oath or affirmation, with the Secretary on a form prescribed by the Secretary. For the purpose of this section, a taxable gift is a gift that is not exempt under G.S. 105-188(h) or (i).

(b) Due Date. -- The tax is due on April 15th following the end of the calendar year. A return must be filed on or before the due date of the tax. A taxpayer may ask the Secretary of Revenue for an extension of time for filing a return under G.S. 105-263."

Section 17. G.S. 105-228.5(d) reads as rewritten:

"(d) Tax Rates; Disposition. --

(1) Workers Compensation. -- The tax rate to be applied to gross premiums, or the equivalent thereof in the case of self-insurers, ~~collected~~ on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The net proceeds shall be credited to the General Fund.

(2) Other Insurance Contracts. -- The tax rate to be applied to gross premiums ~~collected~~ on all other insurance contracts issued by insurers shall be one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund.

(3) Additional Statewide Fire and Lightning Rate. -- An additional tax shall be applied to ~~amounts collected~~ gross premiums on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent (1.33%). Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

(4) Additional Local Fire and Lightning Rate. -- An additional tax shall be applied to ~~amounts collected~~ gross premiums on contracts of insurance applicable to fire and lightning coverage within fire districts at the rate of one-half of one percent (1/2 of

1%). The net proceeds shall be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25.

(5) Article 65 Corporations. -- The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations shall be one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the General Fund."

Section 18. G.S. 105-228.10 reads as rewritten:

"**§ 105-228.10. No additional local taxes.**

~~No county, city, or town shall be allowed to impose any additional tax, license, or fee, other than ad valorem taxes, upon any insurance company or association paying the fees and taxes~~ No city or county may levy on a person subject to the tax levied in this ~~Article.~~ Article a privilege tax or a tax computed on the basis of gross premiums."

Section 19. G.S. 105-249.3 is repealed.

Section 20. G.S. 105-259(b)(3) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(3) Review by a tax official of another ~~state or the Internal Revenue Commissioner of the United States~~ jurisdiction to aid the ~~state or the Commissioner~~ jurisdiction in collecting a tax imposed by this ~~State, the other state, or the United States~~ State or the other jurisdiction if the laws of the other ~~state or the United States allow the state or the United States~~ jurisdiction allow it to provide similar tax information to a representative of this State."

Section 21. G.S. 105-264 reads as rewritten:

"**§ 105-264. Effect of Secretary's interpretation of revenue laws.**

It ~~shall be~~ is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules.

An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes ~~a rule or a bulletin,~~ an interpretation, a taxpayer who relied ~~upon the rule or bulletin~~ on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the ~~rule or bulletin~~ interpretation was changed and was not paid by reason of reliance upon the ~~rule or bulletin.~~ interpretation. If a taxpayer requests in writing specific advice from the Department and receives in response erroneous written advice, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent the advice was reasonably relied upon by

the taxpayer and the penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.

This section does not prevent the Secretary from changing an interpretation and it does not prevent a change in an interpretation from applying on and after the effective date of the change."

Section 22. G.S. 105-277.3 reads as rewritten:

"**§ 105-277.3. Agricultural, horticultural, and forestland -- Classifications.**

(a) Classes Defined. -- The following classes of property are ~~hereby~~ designated special classes of property under authority of ~~Article V, Sec. 2(2)~~ Section 2(2) of Article V of the North Carolina Constitution and shall be appraised, ~~assessed and taxed as hereinafter provided:~~ assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. -- Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

(2) Horticultural land. -- Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have ~~either:~~ met the applicable minimum gross income requirement. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been

~~a.~~ ~~Been~~ used to produce evergreens intended for use as Christmas trees ~~and~~ must have met the ~~qualifying or~~ minimum gross income requirements established by the Department of Revenue for the ~~land; or~~

~~b.~~ ~~Produced~~ land. All other horticultural land must have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. ~~Land in actual production includes land under improvements used in the~~

~~commercial production or growing of fruits or vegetables or nursery or floral products.~~

(3) Forestland. -- Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) Natural Person Ownership Requirements. -- In order to come within a classification described in ~~subdivision (a)(1), (2) or (3), above, the property must,~~ subsection (a) of this section, the land must, if owned by ~~natural persons,~~ a natural person, also satisfy one of the following conditions:

(1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust ~~which~~ that transferred the ~~property~~ land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. -- ~~If~~ In order to come within a classification described in subsection (a) of this section, the land must, if owned by a business entity or trust, ~~the property must~~ have been owned by the business entity or trust or by one or more of its ~~members, or by one or more of its creators in the case of a trust,~~ members or creators, respectively, for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed. ~~Notwithstanding the provisions of G.S. 105-277.2(4)b, a business entity qualifying for a classification described in G.S. 105-277.3 shall not lose the benefit of the classification by reason of the death of one of its members if the decedent's ownership passes to and remains in a relative of the decedent.~~

(b2) Exception to Ownership Requirements. -- ~~Property loses its eligibility for the classifications described in subsection (a) of this section if ownership of the property passes to anyone other than a relative of the owner or passes to or from a business entity or trust from or to anyone other than its members or its creators or beneficiaries, respectively, except that property does not lose its eligibility if both of the following conditions are met: (i) it~~ G.S. 105-277.4(c) provides that deferred taxes are payable if land fails to meet any condition or requirement for classification. Accordingly, if land fails to meet an ownership requirement due to a change of ownership, G.S. 105-277.4(c) applies. Despite this failure and the resulting liability for taxes under G.S. 105-277.4(c), the land may qualify for classification in the hands of the new owner if both of the following conditions are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land:

(1) The land was appraised at its present use value or was eligible for appraisal at its present use value ~~pursuant to that subsection~~ at the

time title to the ~~property~~ land passed to the ~~present owner, and (ii)~~ ~~at~~ new owner.

(2) At the time title to the ~~property~~ land passed to the ~~present~~ new owner, the owner owned other ~~property~~ land classified under subsection (a).

~~The fact that property may retain its eligibility because the preceding two conditions were met does not affect any liability for deferred taxes under G.S. 105-277.4(c) if those taxes were otherwise due at the time title passed to the present owner.~~

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. -- ~~Enrollment~~ Land enrolled in the federal Conservation Reserve Program authorized by ~~Title XII of the Food Security Act of 1985 (Pub. L. 99-198), as amended, shall not preclude eligibility of land for present use value treatment solely on the grounds that the land is no longer~~ 16 U.S.C. § 1381 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program shall be assessed as agricultural land if it is planted in vegetation other than trees, or as ~~forest land~~ forestland if it is planted in trees.

(e) Exception for Turkey Disease. -- ~~Notwithstanding the provisions of subsection (a) of this section, agricultural~~ Agricultural land that meets all of the following conditions ~~does not lose its eligibility for present use value treatment solely on the grounds that it is no longer in actual production, it no longer meets the minimum income requirements, or both:~~ is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.

(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poult Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

(3) The land is otherwise eligible for present use value treatment."

Section 23. G.S. 105-277.4(c) reads as rewritten:

"(c) Deferred Taxes. -- ~~Property~~ Land meeting the conditions for classification under G.S. 105-277.3 shall be taxed on the basis of the value of the ~~property~~ land for its present use. The difference between the taxes due on the present-use basis and the taxes ~~which~~ that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, ~~shall be~~ are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes, but shall not be payable, unless and until the property loses its eligibility for the benefit of this classification.~~ taxes. The taxes become due and payable when the land fails to meet any condition or requirement for classification.

The tax for the fiscal year that opens in the calendar year in which ~~a disqualification occurs shall be~~ deferred taxes become due is computed as if the ~~property~~ land had not been classified for that year, and taxes for the preceding three fiscal years ~~which~~ that have been deferred ~~shall immediately be~~ are immediately payable, together with interest ~~thereon~~ as provided in G.S. 105-360 for unpaid ~~taxes which shall accrue~~ taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land ~~loses its eligibility,~~ fails to meet a condition or requirement for classification, a determination shall be made of the amount of deferred taxes applicable to that part and that amount ~~shall become~~ becomes payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection ~~shall be~~ are extinguished."

Section 24. G.S. 105-277.2(4)b. reads as rewritten:

"b. A business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members ~~are all either a natural person~~ are all natural persons who meet one or more of the following conditions:

1. The member is actively engaged in the business of the ~~entity or a~~ entity.
2. The member is a relative of a member who is actively engaged in the business of the entity.
3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity."

Section 25. G.S. 105-333(14) reads as rewritten:

"(14) Public service company. -- A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, or a motor freight carrier company. ~~any other~~ The term also includes any company performing a public service that is regulated by the ~~Interstate Commerce Commission, the Federal Power Commission,~~ United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, a radio common carrier company as defined in G.S. 62-119(3), a cable television company, or a radio or television broadcasting company. ~~The term also includes a motor freight carrier company. For purposes~~

~~of appraisal under this Article, the term also includes a pipeline company whether or not it performs a public service and whether or not it is regulated by one of the regulatory agencies named in this subdivision.~~"

Section 26. G.S. 105-378(c) is repealed.

Section 27. G.S. 105-395(b) is repealed.

Section 28. G.S. 105-449.88(2) reads as rewritten:

"(2) Motor fuel sold to the federal ~~government.~~ government for its use."

Section 29. G.S. 105-449.105(d) is repealed.

Section 30. G.S. 105-449.110(b) reads as rewritten:

"(b) Interest. -- The rate of interest payable on a refund is the rate set in ~~G.S. 105-242.1(i).~~ G.S. 105-241.1(i). Interest accrues on a refund from the date that is 90 days after the later of the following:

(1) The date the application for refund was filed.

(2) The date the application for refund was due."

Section 30.1. G.S. 105-467(5) reads as rewritten:

"(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were ~~purchased with coupons~~ issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 31. G.S. 105-487 reads as rewritten:

"**§ 105-487. Use of additional tax revenue by ~~counties and municipalities.~~ counties.**

(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes in the next 10 fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes.

~~(b) Except as provided in subsection (c), forty percent (40%) of the revenue received by a municipality from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the municipality and thirty percent (30%) of the revenue received by a municipality from these taxes in the second five fiscal years in which the taxes are in effect in the municipality may be used by the municipality only for water and sewage capital outlay purposes or to retire any indebtedness incurred by the municipality for these purposes.~~

(c) The Local Government Commission may, upon petition by a ~~county or municipality, authorize a county or municipality~~ county, authorize the county to use part or all its tax revenue, otherwise required by subsection (a) ~~or (b)~~ of this section to be used for public ~~schools or water and sewage~~ school capital needs, for any lawful purpose. The petition shall be in the form of a resolution adopted by the ~~City~~

~~Council or~~ Board of County Commissioners and transmitted to the Local Government Commission. The petition shall demonstrate that the county ~~or municipality~~ can provide for its public school ~~or water and sewage~~ capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for ~~these purposes.~~ that purpose.

In making its decision, the Local Government Commission shall consider information contained in the petition concerning not only the public school ~~or water and sewage~~ capital needs, but also the other capital needs of the petitioning ~~county or municipality.~~ county. The Commission may also consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school ~~or water and sewage~~ capital needs of the petitioning county ~~or municipality~~ and the percentage of revenue otherwise restricted by subsection (a) ~~or (b)~~ of this section that may be used by the petitioning county ~~or municipality~~ for any lawful purpose.

Decisions of the Commission allowing counties ~~or municipalities~~ to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) ~~or (b)~~ of this section for any lawful purpose are final and shall continue in effect until the restrictions imposed by ~~those subsections~~ that subsection expire. A county ~~or municipality~~ whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(d) For purposes of determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a ~~county or municipality,~~ county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.

(e) A county ~~or municipality~~ may expend part or all of the revenue restricted for public school ~~or water and sewage~~ capital needs pursuant to ~~subsections (a) and (b)~~ subsection (a) of this section in the fiscal year in which the revenue is received, or the county ~~or municipality~~ may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes."

Section 32. G.S. 105-504 is repealed.

Section 33. G.S. 105-550 reads as rewritten:

"**§ 105-550. Definitions.**

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

(1) Authority. -- A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes.

(2) Long-term lease or rental. -- Defined in G.S. 105-187.1.

(3) Motorcycle. -- Defined in G.S. 20-4.01.

~~(4) Private passenger vehicle. -- Defined in G.S. 20-4.01.~~

(5) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, carpool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

(6) Short-term lease or rental. -- A lease or rental that is not a long-term lease or rental.

(7) U-drive-it passenger vehicle. -- Defined in G.S. 20-4.01."

Section 34. G.S. 105-551(a) reads as rewritten:

"(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting ~~private~~ U-drive-it passenger vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes."

Section 35. G.S. 105-552(b) reads as rewritten:

"(b) Collection. -- A tax levied by an Authority under this Article shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Article is to be added to the lease or rental price of a ~~private~~ U-drive-it passenger vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Article applies regardless of whether the retailer who leases or rents the ~~private~~ U-drive-it passenger vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under this Article must be paid to the Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the ~~private~~ U-drive-it passenger vehicle or motorcycle had elected to pay the optional gross receipts tax."

Section 36. S.L. 1997-139 is reenacted.

Section 37. Article 3 of Chapter 66 of the General Statutes is repealed.

Section 38(a). G.S. 105A-2(2)e. reads as rewritten:

"e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an

intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:

1. The ~~Aid to Families with Dependent Children~~ Work First Program ~~or the Aid to Families with Dependent Children — Emergency Assistance Program, enabled by~~ provided in Article 2 of Chapter ~~108A, Article 2, Part 2.~~ 108A of the General Statutes.
2. The ~~Work First Cash Assistance~~ State-County Special Assistance for Adults Program ~~established pursuant to federal waivers received by the Department of Health and Human Services on February 5, 1996.~~ enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.
3. ~~The State-County Special Assistance for Adults Program, enabled by Chapter 108A, Article 2, Part 3.~~ A successor program of one of these programs.

~~4. A successor program of one of these programs.~~

~~of the General Statutes or~~"

Section 38(b). This section becomes effective January 1, 2000.

Section 39. G.S. 120-70.105 reads as rewritten:

"**§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.**

(a) Membership. -- The Revenue Laws Study Committee is established. The Committee consists of 16 members as follows:

(1) Eight members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Eight members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. -- Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until ~~his~~ a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

Section 40. Article 8 of Chapter 136 of the General Statutes is repealed.

PART II. CONFORM STATUTORY NOMENCLATURE.

Section 41. The designation of G.S. 105-103 through G.S. 105-113 as Division I of Article 2 of Chapter 105 of the General Statutes is eliminated, so that

Article 2 contains G.S. 105-33 through G.S. 105-113 without any subdivision into Parts.

Section 42. Division I of Article 4 of Chapter 105 of the General Statutes is redesignated Part 1.

Section 43. Division IS of Article 4 of Chapter 105 of the General Statutes is redesignated Part 1A.

Section 44. Division II of Article 4 of Chapter 105 of the General Statutes is redesignated Part 2.

Section 45. Division III of Article 4 of Chapter 105 of the General Statutes is redesignated Part 3.

Section 46. Division V of Article 4 of Chapter 105 of the General Statutes is redesignated Part 5.

Section 47. Division I of Article 5 of Chapter 105 of the General Statutes is redesignated Part 1.

Section 48(a). G.S. 105-164.4 through G.S. 105-164.12A are merged into Division II of Article 5 of Chapter 105 of the General Statutes without subdivision into Parts, and the designations for Parts 1 through 4 of that Division are eliminated.

Section 48(b). Division II of Article 5 of Chapter 105 of the General Statutes is redesignated Part 2.

Section 49. Division III of Article 5 of Chapter 105 of the General Statutes is redesignated Part 3.

Section 50. Division IV of Article 5 of Chapter 105 of the General Statutes is redesignated Part 4.

Section 51. Division V of Article 5 of Chapter 105 of the General Statutes is redesignated Part 5.

Section 52. Division VI of Article 5 of Chapter 105 of the General Statutes is redesignated Part 6.

Section 53. Division VII of Article 5 of Chapter 105 of the General Statutes is redesignated Part 7.

Section 54. Division VIII of Article 5 of Chapter 105 of the General Statutes is redesignated Part 8.

Section 55. The title of Article 1 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 1.

~~Schedule A.~~ Inheritance Tax."

Section 56. The title of Article 2A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2A.

~~Schedule B-A.~~ Tobacco Products Tax."

Section 57. The title of Article 2B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2B.

~~Schedule B-B.~~ Soft Drink Tax."

Section 58. The title of Article 2C of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2C.

~~Schedule B-C.~~ Alcoholic Beverage License and Excise Taxes."

Section 59. The title of Article 2D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2D.

~~Schedule B-D.~~ Unauthorized Substances Taxes."

Section 60. The title of Article 3 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3.

~~Schedule C.~~ Franchise Tax."

Section 61. The title of Article 4 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 4.

~~Schedule D.~~ Income Tax."

Section 62. The title of Article 5 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 5.

~~Schedule E.~~ Sales and Use Tax."

Section 63. The title of Article 6 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 6.

~~Schedule G.~~ Gift Taxes."

Section 64. The title of Article 8A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8A.

~~Schedule I-A.~~ Gross Earnings Taxes <u>on Freight Line Companies</u> in Lieu of Ad Valorem Taxes."

Section 65. The title of Article 8B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8B.

~~Schedule I-B.~~ Taxes upon Insurance Companies."

Section 66. The title of Article 8D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8D.

~~Schedule I-D.~~ Taxation of Savings and Loan Associations."

Section 67. The title of Article 9 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 9.

~~Schedule J.~~ General Administration; Penalties and Remedies."

Section 68. The following sections of the General Statutes are amended by deleting the phrase "This Division" each time it occurs and substituting "This Part":

G.S. 105-130
G.S. 105-131(a)
G.S. 105-131.1(b)
G.S. 105-133
G.S. 105-160

Section 69. The following sections of the General Statutes are amended by deleting the phrase "this Division" or "this division" each time it occurs and substituting "this Part":

G.S. 105-130.1
G.S. 105-130.2
G.S. 105-130.4(l)(1)
G.S. 105-130.4(m)
G.S. 105-130.5(a)(2)
G.S. 105-130.5(c)
G.S. 105-130.6
G.S. 105-130.8
G.S. 105-130.11
G.S. 105-130.12
G.S. 105-130.15
G.S. 105-130.16
G.S. 105-130.18
G.S. 105-130.22
G.S. 105-130.23
G.S. 105-130.25
G.S. 105-130.34
G.S. 105-130.41
G.S. 105-130.42
G.S. 105-131(b) & (c)
G.S. 105-134
G.S. 105-134.1
G.S. 105-134.3
G.S. 105-134.6
G.S. 105-151.1
G.S. 105-151.2
G.S. 105-151.11(a)
G.S. 105-151.12
G.S. 105-151.18(a) & (b)
G.S. 105-151.20
G.S. 105-151.22
G.S. 105-151.23
G.S. 105-151.24

G.S. 105-151.26
G.S. 105-152(a) through (d)
G.S. 105-154
G.S. 105-156
G.S. 105-158
G.S. 105-160.1
G.S. 105-160.2
G.S. 105-160.4(a)
G.S. 105-160.5
G.S. 105-160.8
G.S. 105-163.010
G.S. 105-163.013
G.S. 105-163.014

Section 70. The following sections of the General Statutes are amended by deleting the phrase "Division I" each time it occurs and substituting the phrase "Part 1":

G.S. 105-131(b)(2)
G.S. 105-164.44C
G.S. 105-275.1(e)
G.S. 105-277.001(f)
G.S. 105-277.1A(f)

Section 71. The following sections of the General Statutes are amended by deleting the phrase "Division II" each time it occurs and substituting the phrase "Part 2":

G.S. 105-160.1
G.S. 105-160.4(e)
G.S. 105-163.011(b) & (b1)
G.S. 105-163.012
G.S. 105-163.15
G.S. 105-269.6
G.S. 105-275.2

Section 72. The following sections of the General Statutes are amended by deleting the phrase "Division V" each time it occurs and substituting the phrase "Part 5":

G.S. 105-116(a)
G.S. 105-120(a)
G.S. 105-120.2(f)
G.S. 105-122(d)

Section 73. G.S. 105-7 reads as rewritten:

"**§ 105-7. Estate tax.**

(a) A tax in addition to the inheritance tax imposed by this ~~schedule is hereby~~ Article is imposed upon the transfer of the net estate of every decedent, whether a resident or nonresident of the State, where the inheritance tax imposed by this ~~schedule~~ Article is less than the maximum state death tax credit allowed by the

Federal Estate Tax Act as contained in the Code because of ~~said tax herein imposed.~~ the tax imposed by this Article. In such a case, the inheritance tax ~~provided for by this schedule~~ imposed by this Article shall be increased by an estate tax on the net estate so that the aggregate amount of tax due this State ~~shall be~~ equals the maximum amount of credit allowed under ~~said~~ the Federal Estate Tax Act. ~~Said~~ This additional tax shall be paid out of the same funds as any other tax against the estate.

(b) ~~Where~~ If no tax is imposed by this ~~schedule~~ Article because of ~~the~~ exemptions ~~herein~~ or otherwise, and a tax is due the United States under the Federal Estate Tax Act, then a tax ~~shall be~~ is due this State equal to the maximum amount of the credit allowed under ~~said~~ the Federal Estate Tax Act.

(c) The administrative provisions of this ~~schedule,~~ Article, wherever applicable, shall apply to the collection of the tax imposed by this section. The amount of the tax as imposed by subsection (a) of this section shall be computed in full accordance with the Federal Estate Tax Act as contained in the Code."

Section 74. G.S. 105-8 reads as rewritten:

"**§ 105-8. Treatment allowed for gift tax paid.**

~~In case a tax has been imposed under Schedule G of the Revenue Act of 1937, or under subsequent acts,~~ If a tax has been imposed under Article 6 of this Chapter upon any gift, and thereafter upon the death of the donor, the amount ~~thereof~~ of the gift is required by ~~any provision of~~ this Article to be included in the gross estate of the decedent, then there shall be credited against and applied in reduction of the tax, which would otherwise be chargeable against the beneficiaries of the estate under ~~the provisions of~~ this Article, an amount equal to the tax paid with respect to ~~such~~ the gift. Any additional tax found to be due because of the inclusion of gifts in the gross estate of the ~~decedent, as provided herein,~~ decedent shall be a tax against the estate and shall be paid out of the same funds as any other tax against the estate."

Section 75. The introductory language of G.S. 105-9 reads as rewritten:

"**§ 105-9. Deductions.**

In determining the clear market value of property taxed under this Article, ~~or schedule,~~ the following deductions, and no others, shall be allowed:".

Section 76. G.S. 105-114(a)(2) reads as rewritten:

"(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which ~~such~~ these corporations receive from the government and laws of this State in doing business in this State.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in ~~such~~ the corporate form of organization; and if the corporation is not organized under the laws of this State, payment of these taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article ~~or schedule shall be~~ are for the fiscal year of the State in which the taxes become due;

except that the taxes levied in G.S. 105-122 ~~shall be~~ are for the income year of the corporation in which the taxes become due.

G.S. 105-122 does not apply to street transportation systems taxed under G.S. 105-120.1 or holding companies taxed under G.S. 105-120.2. G.S. 105-122 applies to a corporation taxed under another section of this Article only to the extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the corporation in other sections of this Article."

Section 77. G.S. 105-122(a) reads as rewritten:

"(a) Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this ~~Article or schedule;~~ Article, shall, on or before the fifteenth day of the third month following the end of its income year, ~~annually;~~ annually make and deliver to the Secretary ~~of Revenue in such form as he may prescribe~~ in the form prescribed by the Secretary a full, ~~accurate~~ accurate, and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing ~~such~~ the facts and information ~~as may be~~ required by the Secretary ~~of Revenue~~ as shown by the books and records of the corporation at the close of ~~such~~ the income year.

There shall be annexed to the return required by this subsection the affirmation of the officer signing the return in the following form: "Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. If prepared by a person other than taxpayer, ~~his~~ this affirmation is based on all information of which ~~he~~ the preparer has any knowledge."

Section 78. G.S. 105-127(b) is repealed.

Section 79. G.S. 105-130.26 reads as rewritten:

"§ 105-130.26. Credit ~~against corporate income tax~~ for conversion of industrial boiler to wood fuel.

~~Any corporation which~~ A corporation that modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one ~~which~~ that is capable of burning wood ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division,~~ Part an amount equal to fifteen percent (15%) of the installation and equipment cost of ~~such conversion; provided, that in order to secure~~ the conversion paid during the taxable year. In order to claim the credit allowed by this section, the taxpayer must own or control the business in which ~~such~~ the boiler or kiln is used at the time of ~~such conversion and payment in part or in whole for such installation and equipment must be made by the taxpayer during the tax year for which the credit is claimed; and the amount of credit allowed for any one income year shall be limited to fifteen percent (15%) of such costs paid during the year; and the~~ the conversion. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax

made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry production and that credit exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years."

Section 80. G.S. 105-130.27(a) reads as rewritten:

"(a) Credit Allowed. -- ~~Any corporation which~~ A corporation that constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division.~~ Part. Subject to the limitation provided in subsection (d) of this section, the amount of the credit shall be equal to twenty percent (20%) of the installation and construction costs of the ~~distillery,~~ distillery paid during the year preceding the taxable year, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of ~~construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source.~~ construction. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the ~~Secretary of Revenue.~~ Secretary. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer."

Section 81. G.S. 105-130.27A reads as rewritten:

"§ 105-130.27A. Credit ~~against corporate income tax~~ for construction of a peat facility.

(a) ~~Any corporation which~~ A corporation that constructs in North Carolina a facility ~~which~~ that uses peat as the feedstock for the production of a commercially manufactured energy source to replace petroleum, natural ~~gas or other~~ gas, or another nonrenewable energy ~~sources shall be~~ source is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty percent (20%) of the installation and equipment costs of ~~construction; provided, that the credit shall not be allowed~~ construction paid during the taxable year. No credit is allowed, however, to the extent that any of the cost of the system was provided by federal, State, or local grants. In order to secure the credit allowed by this section, the taxpayer must own or control ~~such~~ the facility at the time of ~~construction, and the credit allowed by this section shall not exceed~~ construction. The credit allowed by this section may not exceed the amount of ~~the~~ tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer.

(b) The amount of unused credit allowed under this section may be carried over for the next succeeding five years."

Section 82. G.S. 105-130.28(a) reads as rewritten:

"(a) Any corporation that constructs in North Carolina a facility for the production of photovoltaic equipment is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty-five percent (25%) of the installation and equipment costs of ~~construction. This credit shall not be allowed~~ construction paid during the taxable year. No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 83. G.S. 105-130.29 reads as rewritten:

"§ 105-130.29. Credit ~~against corporate income tax~~ for construction of an olivine brick facility.

(a) Any corporation that constructs in North Carolina a facility for the production of olivine bricks for thermal storage ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty percent (20%) of the installation and equipment costs of ~~construction. This credit shall not be allowed~~ construction paid during the taxable year. No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) The amount of credit allowed under this section may be carried over for the next succeeding five years."

Section 84. G.S. 105-130.30 reads as rewritten:

"§ 105-130.30. Credit ~~against corporate income tax~~ for construction of a methane gas facility.

(a) Any corporation that constructs in North Carolina a facility for the production of methane gas from renewable biomass resources ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of ~~construction.~~ construction paid during the taxable year. The credit allowed under this section may not exceed two thousand five hundred dollars ($2,500) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this

~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "renewable biomass resources" means organic matter produced by terrestrial and aquatic plants and animals such as standing vegetation, aquatic crops, forestry and agricultural ~~residues~~ residues, and animal wastes that can be used for the production of energy."

Section 85. G.S. 105-130.31 reads as rewritten:

"§ 105-130.31. Credit ~~against corporate income tax~~ for installation of a wind energy device.

(a) Any corporation that constructs or installs a wind energy device for the production of electricity at a site located in this State ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of the wind energy ~~device.~~ device paid during the taxable year. The credit allowed under this section may not exceed one thousand dollars ($1,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "wind energy device" means equipment (and parts solely related to the functioning of the equipment) that, when installed on a site, transmits or uses wind energy to generate electricity."

Section 86. G.S. 105-130.32 reads as rewritten:

"§ 105-130.32. Credit ~~against corporate income tax~~ for installation of solar energy equipment for the production of heat or electricity in certain processes.

(a) Any corporation that constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of its business located in this State is allowed a credit against the tax imposed by this ~~Division~~ Part equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy ~~equipment.~~ equipment paid during the taxable year. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "solar energy equipment" means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun."

Section 87. G.S. 105-130.33(a) reads as rewritten:

"(a) Any corporation that constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of the hydroelectric ~~generator.~~ paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits allowable under this ~~Division,~~ Part, except payments of tax made by or on behalf of the taxpayer."

Section 88. G.S. 105-130.36(a) reads as rewritten:

"(a) Any corporation that purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty-five percent (25%) of the cost of the ~~equipment.~~ equipment paid during the taxable year. This credit may not exceed two thousand five hundred dollars ($2,500) for any ~~income~~ taxable year for any taxpayer. The credit may ~~only~~ be claimed only by the first purchaser of the equipment and may not be claimed by a corporation that purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. If the credit allowed by this section exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of credit allowable."

Section 89. G.S. 105-130.37(a) reads as rewritten:

"(a) Any corporation that grows a crop and permits the gleaning of the crop during the taxable year is ~~shall be~~ allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. No deduction is allowed under G.S. 105-130.5(b)(5) for the items for which a credit is claimed under this section. Any unused portion of the credit may be carried forward for the succeeding five years."

Section 90. G.S. 105-130.39 reads as rewritten:

"§ 105-130.39. Credit for certain telephone subscriber line charges.

(a) A corporation that provides local telephone service to low-income residential consumers at reduced rates pursuant to an order of the North Carolina Utilities Commission is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the difference ~~between:~~ between the following:

(1) The amount of receipts the corporation would have received during the taxable year from those low-income customers had the customers been charged the regular rates for local telephone service and ~~fees; and~~ fees.

(2) The amount billed those low-income customers for local telephone service during the taxable year.

(b) This credit is allowed only for a reduction in local telephone service rates and fees and is not allowed for any reduction in interstate subscriber line charges. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except tax payments made by or on behalf of the corporation."

Section 91. G.S. 105-134.7(a)(7) reads as rewritten:

"(7) The transitional adjustments provided in ~~Division I-S~~ Part 1A of this Article shall be made with respect to a shareholder's pro rata share of S Corporation income."

Section 92. G.S. 105-151 reads as rewritten:

"§ 105-151. Tax credits for income taxes paid to other states by individuals.

(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this ~~Division~~ Part for income taxes imposed by and paid to another state or country on income taxed under this ~~Division,~~ Part, subject to the following conditions:

(1) The credit ~~shall be~~ is allowed only for taxes paid to another state or country on income derived from sources within that state or country that is taxed under its laws irrespective of the residence or domicile of the ~~recipient; provided,~~ recipient, except that whenever a taxpayer who is deemed to be a resident of this State under the provisions of this ~~Division~~ Part is deemed also to be a resident of another state or country under the laws of that state or country, the Secretary ~~may, in his discretion,~~ may allow a credit against the taxes imposed by this ~~Division~~ Part for taxes imposed by and paid to the other state or country on income taxed under this ~~Division.~~ Part.

(2) The fraction of the gross income, as calculated under the Code and adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed ~~shall be~~ is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed shall be filed with the Secretary ~~at, or prior to, the time~~ when the credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for the taxes so credited or refunded ~~shall be~~ is due and payable from the taxpayer and ~~shall be~~ is subject to the penalties and interest provided in Subchapter I of this Chapter."

Section 93. G.S 105-151.5 reads as rewritten:

"§ 105-151.5. Credit for conversion of industrial boiler to wood fuel.

A ~~person~~ taxpayer who modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one that is capable of burning wood ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to fifteen percent (15%) of the installation and equipment cost of the ~~conversion; provided, that in order to secure~~ conversion paid during the taxable year. In order to claim the credit allowed by this section, the taxpayer must own or control the business in which the boiler or kiln is used at the time of the ~~conversion and payment in part or in whole for the installation and equipment must be made by the taxpayer during the taxable year for which the credit is claimed. The amount of credit allowed for any one taxable year may not exceed fifteen percent (15%) of the costs paid during the year.~~ conversion. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry production and that credit exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years."

Section 94. G.S. 105-151.6(a) reads as rewritten:

"(a) Credit Allowed. -- Any person who constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division.~~ Part. Subject to the limitation provided in subsection (d) of this section, the amount of the credit ~~shall be equal to~~ is twenty percent (20%) of the installation and construction costs of the ~~distillery,~~ distillery paid during the year preceding the taxable year, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the

time of ~~construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source.~~ construction. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the ~~Secretary of Revenue.~~ Secretary. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer."

Section 95. G.S. 105-151.7(a) reads as rewritten:

"(a) A person who constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of the hydroelectric ~~generator.~~ generator paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 96. G.S. 105-151.8(a) reads as rewritten:

"(a) A person who constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of the person's business located in this State is allowed a credit against the tax imposed by this ~~Division~~ Part equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy ~~equipment.~~ equipment paid during the taxable year. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer. In no case ~~shall a tax credit be~~ is a credit allowed under both this section and G.S. 105-151.2."

Section 97. G.S. 105-151.9(a) reads as rewritten:

"(a) A person who constructs or installs a wind energy device for the production of electricity at a site located in this State ~~shall be~~ is allowed as a credit against the

tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of the wind energy ~~device.~~ device paid during the taxable year. The credit allowed under this section may not exceed one thousand dollars ($1,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 98. G.S. 105-151.10(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who constructs in North Carolina a facility for the production of methane gas from renewable biomass resources shall be allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of ~~construction.~~ construction paid during the taxable year. The credit allowed under this section may not exceed two thousand five hundred dollars ($2,500) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 99. G.S. 105-151.11(c) reads as rewritten:

"(c) Limitations. -- No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code. The credit allowed by this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State."

Section 100. G.S. 105-151.13(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to twenty-five percent (25%) of the cost of the ~~equipment.~~ equipment paid during the taxable year. This credit may not exceed two thousand five hundred dollars ($2,500) for any taxable year. The credit may be claimed only by the first purchaser of the equipment and may not be claimed by a person who purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. If the credit allowed by

this section exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the next succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of the credit allowable."

Section 101. G.S. 105-151.14(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who grows a crop and permits the gleaning of the crop during the taxable year shall be allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. In order to claim the credit allowed under this section, the taxpayer must add the market price of the gleaned crop to taxable income as provided in G.S. 105-134.6(c). Any unused portion of the credit may be carried forward for the next succeeding five years."

Section 102. G.S. 105-151.18(d) reads as rewritten:

"(d) Limitations. -- A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 103. G.S. 105-151.21(a) reads as rewritten:

"(a) Credit. -- An individual engaged in the business of farming is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the amount of property taxes the individual paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. In addition, an individual shareholder of an S Corporation engaged in the business of farming is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the shareholder's pro rata share of the amount of property taxes the S Corporation paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. The total credit allowed under this section may not exceed one thousand dollars ($1,000) for the taxable year and may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer. To claim the credit, the taxpayer shall attach to the return a copy of the tax receipt for the property taxes for which credit is claimed. The receipt must indicate that the taxes have been paid and the amount and date of the payment."

Section 104. G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. -- A husband and wife shall file a single income tax return jointly if (i) their federal taxable income is determined on a joint federal return and (ii) both spouses are residents of this State or both spouses have North Carolina taxable income. Except as otherwise provided in this ~~Division,~~ Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the

tax imposed by this ~~Division.~~ Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this ~~Division~~ Part reduced by the sum of all credits ~~allowable under this Division~~ allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6013 of the Code, that spouse is not liable for the corresponding tax imposed by this ~~Division~~ Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

Section 105. G.S. 105-160.3(a) reads as rewritten:

"(a) Except as otherwise provided in this section, the credits allowed to an individual against the tax imposed by ~~Division II~~ Part 2 of this Article shall be allowed to the same extent to an estate or a trust against the tax imposed by this ~~Division.~~ Part. Any credit computed as a percentage of income received shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. No credit may exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the estate or trust."

Section 106. G.S. 105-164.3(22) reads as rewritten:

"(22) "Use tax" means ~~and includes~~ the tax imposed by Part ~~3 in Division II~~ 2 of this Article."

Section 107. G.S. 105-164.13(5) reads as rewritten:

"(5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered ~~wholesale or retail~~ retailers or wholesale merchants, for the purpose of resale except as modified by ~~Division I, G.S. 105-164.3, subdivision (23). Provided, however, this exemption shall~~ G.S. 105-164.3(23). This exemption does not extend to or include retail sales to users or consumers not for resale."

Section 108. G.S. 105-164.26 reads as rewritten:

"**§ 105-164.26. Presumption that sales are taxable.**

For the purpose of the proper administration of ~~this division of~~ this Article and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records as required ~~herein.~~ in this Article. It shall be prima facie presumed that tangible personal property sold by any person for delivery in this State, however made, and by carrier or otherwise, is sold for storage, ~~use~~ use, or other consumption in this State, and a like presumption shall apply to tangible personal property delivered ~~without~~ outside this State and brought to this State by the ~~purchaser thereof.~~ purchaser. "

Section 109. G.S. 105-228.1 reads as rewritten:

"**§ 105-228.1. Defining taxes levied and assessed in this Article.**

The purpose of this Article is to levy a fair and equal tax under authority of ~~Article V, Sec. 3 of the Constitution of North Carolina~~ Section 2(2) of Article V of the North Carolina Constitution and to provide a practical means for ascertaining and collecting it. The taxes levied and assessed in this ~~schedule shall be upon the gross earnings~~ Article are on gross earnings, as defined in the Article, and ~~shall be~~ are in lieu of ad valorem taxes upon the properties of ~~individuals, firms, or corporations so taxed herein.~~ persons taxed in this Article."

Section 110. G.S. 105-266(c) reads as rewritten:

"(c) Statute of Limitations. -- The period in which a refund must be demanded or discovered under this section is determined as follows:

(1) General Rule. -- No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later.

(2) Worthless Debts or Securities. -- Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in ~~Division II or III~~ Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:

a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.

b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.

(3) Capital Loss and Net Operating Loss Carrybacks. -- Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in ~~Division II or III~~ Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.

(4) Federal Determination. -- When a taxpayer files with the Secretary a return that reflects a federal determination and the return is filed within the required time, the period in which a refund must be demanded or discovered is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later."

Section 111. G.S. 105-309(d) reads as rewritten:

"(d) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by an abstract form approved by the Department of Revenue. Personal property shall also be listed to indicate which property, if any, is subject to a tax credit under ~~Division IV of Article 4 of this Chapter.~~ G.S. 105-151.21.

(1) If the assessor considers it necessary to obtain a complete listing of personal property, ~~he~~ the assessor may require a taxpayer to submit additional information, inventories, or itemized lists of personal property.

(2) At the request of the assessor, the taxpayer shall furnish any information ~~he may have~~ the taxpayer has with respect to the true value of the personal property ~~he~~ the taxpayer is required to list."

Section 112. G.S. 105-366(b)(5) reads as rewritten:

"(5) The stock of goods or fixtures of a wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer, as defined in G.S. 105-164.3, in the hands of a purchaser or transferee thereof, or any other personal property of the purchaser or transferee of ~~such~~ the property, if the taxes on the goods or fixtures remain unpaid 30 days after the date of the sale or ~~transfer, but in such a case the~~ transfer. In the case of other personal property of the purchaser or transferee, the levy or attachment must be made within six months of the sale or transfer."

Section 113. G.S. 105-366(d) reads as rewritten:

"(d) Remedies against Sellers and Purchasers of Stocks of Goods or Fixtures of Wholesale ~~or Retail Merchants.~~ Merchants or Retailers. --

(1) Any wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer, as defined in G.S. 105-164.3, who sells or transfers the major part of ~~his~~ its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of ~~business or who goes out of business, shall:~~ business, or who goes out of business, must take the following actions:

a. At least 48 hours prior to the date of the pending sale, transfer, or termination of business, give notice ~~thereof~~ to the assessors and tax collectors of the taxing units in which ~~his~~ the business is ~~located; and~~ located.

b. Within 30 days of the sale, transfer, or termination of business, pay all taxes due or to become due on the transferred property on the first day of September of the current calendar year.

(2) Any person to whom the major part of the stock of goods, materials, supplies, or fixtures of a wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer is sold or transferred, other than in the ordinary course of

business, or who becomes the successor in business of a wholesale ~~or retail merchant~~ merchant or retailer shall withhold from the purchase money paid to the merchant an amount sufficient to pay the taxes due or to become due on the transferred property on the first day of September of the current calendar year until the former owner or seller produces either a receipt from the tax collector showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser or successor in business fails to withhold a sufficient amount of the purchase money to pay the taxes as required by this subsection ~~(d)~~ and the taxes remain unpaid after the 30-day period allowed, ~~he shall be~~ the purchaser or successor is personally liable for the amount of the taxes ~~unpaid, and his~~ unpaid. This liability may be enforced by means of a civil action brought in the name of the taxing unit against ~~him~~ the purchaser or successor in an appropriate trial division of the General Court of Justice in the county in which the taxing unit is located.

(3) Whenever any wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer sells or transfers the major part of ~~his~~ its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or goes out of ~~business,~~ business and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid, the tax collector, to enforce collection of the unpaid taxes, ~~may:~~ may do any of the following:

a. Levy on or attach any personal property of the ~~seller; or~~ seller.

b. If the taxes remain unpaid 30 days after the date of the transfer or termination of business, levy on or attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business.

(4) In using the remedies provided in this ~~subsection (d),~~ subsection, the amount of taxes not yet determined shall be computed in accordance with G.S. 105-359, and any applicable discount shall be allowed."

PART III. EFFECTIVE DATE.

Section 114. Except as otherwise provided in this act, this act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1226 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATES STATUTES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1230
Second Edition Engrossed 5/27/98
Third Edition Engrossed 6/10/98
Proposed Committee Substitute S1230-PCS8839-LA001

Short Title: Motor Fuel Tax Changes. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT RACING GASOLINE FROM THE PER GALLON EXCISE TAX, TO CLARIFY THE TAXATION OF KEROSENE, AND TO MAKE OTHER CHANGES IN THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.39 reads as rewritten:

"**§ 105-449.39. Credit for payment of motor fuel tax.**

Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid by the carrier on fuel purchased in the State. A motor carrier who files a quarterly report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. A motor carrier who files an annual report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable cents-per-gallon rates of tax in effect during the year for which the credit is claimed. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a reporting period exceeds the motor carrier's liability for that reporting period, ~~the excess may, in accordance with rules adopted by the Secretary, be refunded to the motor carrier or carried forward and applied to the motor carrier's tax liability for another reporting period. Before the Secretary allows a motor carrier a refund, the Secretary may audit~~

~~the motor carrier's records or require the motor carrier to furnish a bond under G.S. 105-449.40.~~ the Secretary must refund the excess to the motor carrier."

Section 2. G.S. 105-449.52(b) reads as rewritten:

"(b) Hearing. -- Any person denying liability for a penalty imposed under this section ~~may~~ must pay the penalty under protest and apply to the Department of Revenue for a hearing. Upon receiving a request for a hearing, the Secretary shall schedule a hearing before a duly designated employee or agent of the Department within 30 days after receipt of the request. If after the hearing the Department determines that the person was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department determines that the person was liable for the penalty, the person paying the penalty may bring an action in the Superior Court of Wake County against the Secretary of Revenue for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty."

Section 3. G.S. 105-449.60 reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

(1) Antiknock Index Number. -- The arithmetic average of the American Society for Testing and Materials (ASTM) Research octane number (RON) and the ASTM Motor octane number (MON), that is (RON + MON)/2.

~~(1)~~ (1a) Blended fuel. -- A mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

(2) Blender. -- A person who produces blended fuel outside the terminal transfer system.

(3) Bulk-end user. -- A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

(4) Bulk plant. -- A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(5) Code. -- Defined in G.S. 105-228.90.

(6) Destination state. -- The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

(7) Diesel fuel. -- Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes kerosene. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.

(8) Distributor. -- A person who acquires motor fuel from a supplier or from another distributor for subsequent sale.

(9) Dyed diesel fuel. -- Diesel fuel that meets the dyeing and marking requirements of § 4082 of the Code.

(10) Elective supplier. -- A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

(11) Export. -- To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

(12) Fuel alcohol. -- Methanol or fuel grade ethanol.

(13) Fuel alcohol provider. -- A person who does any of the following:

a. Produces fuel alcohol.

b. Imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank car.

(14) Gasohol. -- A blended fuel composed of gasoline and fuel grade ethanol.

(15) Gasoline. -- Any of the following:

a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method.

b. A petroleum product component of gasoline, such as naptha, reformate, or toluene.

c. Gasohol.

d. Fuel grade ethanol.

The term does not include aviation gasoline sold for use in an aircraft motor. 'Aviation gasoline' is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.

(16) Gross gallons. -- The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

(17) Highway. -- Defined in G.S. 20-4.01(13).

(18) Highway vehicle. -- A self-propelled vehicle that is designed for use on a highway.

(19) Import. -- To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this

State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

(19a) In-State-only supplier. -- Either of the following:

a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

b. A supplier that does business only in this State.

(20) Motor fuel. -- Gasoline, diesel fuel, and blended fuel.

(21) Motor fuel rate. -- The rate of tax set in G.S. 105-449.80.

(22) Motor fuel transporter. -- A person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.

(23) Net gallons. -- The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.

(24) Permissive supplier. -- An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.

(25) Person. -- Defined in G.S. 105-228.90.

(26) Position holder. -- The person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

(26a) Racing fuel. -- Gasoline that meets all of the following descriptions:

a. Has an Antiknock Index Number of more than 100.

b. Has 90 percent (90%) evaporation at a maximum temperature of 290 degrees Fahrenheit as determined by the American Society for Testing and Materials Test Method D 86.

c. Either contains more than 0.05 grams per gallon of lead or contains more than 2.8 weight percent oxygen.

(27) Rack. -- A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.

(28) Removal. -- A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

(29) Retailer. -- A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.

(30) Secretary. -- Defined in G.S. 105-228.90.

(31) Supplier. -- Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party ~~exchange.~~ transaction.

b. A fuel alcohol provider.

(32) System transfer. -- Either of the following:

a. A transfer of motor fuel within the terminal transfer system.

b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.

(33) Tank wagon. -- A truck that is not a transport truck and has multiple compartments designed or used to carry motor fuel.

(33a) Tax. -- An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.

(34) Terminal. -- A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.

(35) Terminal operator. -- A person who owns, operates, or otherwise controls a terminal.

(36) Terminal transfer system. -- The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as 'bulk transfer/terminal system' under 26 C.F.R. § 48.4081-1.

(37) Transmix. -- Either of the following:

a. The buffer or interface between two different products in a pipeline shipment.

b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.

(38) Transport truck. -- A semitrailer combination rig designed or used to transport loads of motor fuel over a highway.

(39) Trustee. -- A person who is licensed as a supplier, an elective supplier, or a permissive supplier and who receives tax payments from and on behalf of a licensed distributor.

(40) Two-party ~~exchange.~~ transaction. -- A transaction in which motor fuel is transferred ~~from one licensed supplier to another licensed supplier pursuant to an exchange agreement whereby the supplier that is the position holder agrees~~ between two licensed suppliers as the motor fuel crosses the terminal rack as the result of an exchange agreement or a sale between the suppliers that requires the supplier that is the position holder to deliver motor fuel to the

other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

(41) User. -- A person who owns or operates a licensed highway vehicle and does not maintain storage facilities for motor fuel."

Section 4. G.S. 105-449.72 is amended by adding the following new subsection to read:

"(d) Replacements. -- When a license holder files a bond or an irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the license holder has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions:

(1) Return the previously filed bond or letter of credit.

(2) Notify the person liable on the previously filed bond and the license holder that the person is released from liability on the bond."

Section 5. G.S. 105-449.87(b) reads as rewritten:

"(b) Liability. -- The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end seller is jointly and severally liable for the tax. If the Secretary determines that a bulk-end user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

Section 6. G.S. 105-449.88 reads as rewritten:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state.

(2) Motor fuel sold to the federal government.

(3) Motor fuel sold to the State for its use.

(4) Motor fuel sold to a local board of education for use in the public school system.

(5) Diesel that is kerosene and is sold to an airport.

(6) Racing fuel dispensed at a race track for use in a racing vehicle."

Section 7. G.S. 105-449.94 is amended by adding the following new subsection to read:

"(e) Penalty. -- A licensed distributor or a licensed importer that deducts an exempt sale when paying tax to a supplier and does not report the sale by filing the return required by this section is liable for a penalty of two hundred fifty dollars ($250.00)."

Section 8. Part 5 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-449.105A. Monthly refunds for kerosene.**

A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for heating.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that is marked for nonhighway use in accordance with the requirements in G.S. 105-449.123(a)(1) through (a)(3) and has a dispensing device that is not suitable for use in fueling a highway vehicle."

Section 9. G.S. 105-164.13(11)a. reads as rewritten:

"a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105(c) or ~~(d)~~ (d), under G.S. 105-449.105A, or under G.S. 105-449.107."

Section 10. G.S. 105-449.108 reads as rewritten:

"**§ 105-449.108. When an application for a refund is due.**

(a) ~~Annual Refunds. -- An application for an annual refund of excise tax is due by April 15 following the end of the calendar year for which the refund is claimed. The application must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.~~ Due Dates. -- The due dates of applications for refunds are as follows:

Refund Period	Due Date
Annual	April 15 after the end of the year
Quarterly	Last day of the month after the end of the quarter
Monthly	22nd day after the end of the month
Upon Application	Last day of the month after the month in which tax was paid or the event occurred that is the basis of the refund.

(b) ~~Quarterly Refunds. -- An application for a quarterly refund of excise tax is due by the last day of the month following the end of the calendar quarter for which the refund is claimed. The application must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.~~ Requirements. -- An application for an annual refund must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year. An application for a refund allowed under this Part must

state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

~~(e) Upon Application. -- An application for a refund of excise tax upon application under G.S. 105-449.105 is due by the last day of the month that follows the payment of tax or other event that is the basis of the refund.~~"

Section 11. G.S. 105-449.132 reads as rewritten:

"**§ 105-449.132. How to apply for a license.**

To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. An applicant must meet the requirements for obtaining a license set out in G.S. 105-449.69(b)."

Section 12. The following persons who have kerosene that is on hand or in their possession as of 12:01 a.m. on July 1, 1998, and is not in the terminal transfer system must inventory the kerosene and report the results of the inventory to the Secretary of Revenue:

(1) Retailers who maintain storage facilities for kerosene of at least 2,000 gallons.
(2) Distributors.
(3) Importers.
(4) Suppliers.

The amount of kerosene in dead storage is not considered to be part of inventory and shall not be included in the report. "Dead storage" is the amount of kerosene in a storage tank that will not be pumped out of the tank because the kerosene is below the mouth of the draw pipe. For a storage tank with a capacity of less than 2,000 gallons, the amount of kerosene in dead storage is considered to be 200 gallons. For a storage tank with a capacity of 2,000 gallons or more, the amount of kerosene in dead storage is considered to be 400 gallons. The report of inventory must be made on a form provided by the Secretary. The report is due by July 15, 1998.

Section 13. Section 3 of this act becomes effective August 1, 1998. G.S. 105-449.88(5), as enacted by Section 6 of this act, is effective when it becomes law and applies to kerosene sold on or after July 1, 1998, and G.S. 105-449.88(6), as enacted by Section 6 of this act, becomes effective August 1, 1998. Section 7 of this act becomes effective September 1, 1998. The remaining sections of this act are effective when they become law; Section 1 applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998, and Sections 8 and 9 of this act apply to kerosene sold on or after July 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 1230
Second Edition Engrossed 5/27/98
Third Edition Engrossed 6/10/98

Short Title: Motor Fuel Tax Changes. (Public)

Sponsors: Senators Kerr, Cochrane, Dalton, Hartsell, and Hoyle.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT RACING GASOLINE FROM THE PER GALLON EXCISE TAX, TO CLARIFY THE TAXATION OF KEROSENE, AND TO MAKE OTHER CHANGES IN THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.39 reads as rewritten:

"**§ 105-449.39. Credit for payment of motor fuel tax.**

Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid by the carrier on fuel purchased in the State. A motor carrier who files a quarterly report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. A motor carrier who files an annual report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable cents-per-gallon rates of tax in effect during the year for which the credit is claimed. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a reporting period exceeds the motor carrier's liability for that reporting period, ~~the excess may, in accordance with rules adopted by the Secretary, be refunded to the motor carrier or carried forward and applied to the motor carrier's tax liability for another reporting period. Before the Secretary allows a motor carrier a refund, the Secretary may audit~~

~~the motor carrier's records or require the motor carrier to furnish a bond under G.S. 105-449.40.~~ the Secretary must refund the excess to the motor carrier."

Section 2. G.S. 105-449.52(b) reads as rewritten:

"(b) Hearing. -- Any person denying liability for a penalty imposed under this section ~~may~~ must pay the penalty under protest and apply to the Department of Revenue for a hearing. Upon receiving a request for a hearing, the Secretary shall schedule a hearing before a duly designated employee or agent of the Department within 30 days after receipt of the request. If after the hearing the Department determines that the person was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department determines that the person was liable for the penalty, the person paying the penalty may bring an action in the Superior Court of Wake County against the Secretary of Revenue for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty."

Section 3. G.S. 105-449.60 reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

(1) Antiknock Index Number. -- The arithmetic average of the American Society for Testing and Materials (ASTM) Research octane number (RON) and the ASTM Motor octane number (MON), that is (RON + MON)/2.

~~(1)~~ (1a) Blended fuel. -- A mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

(2) Blender. -- A person who produces blended fuel outside the terminal transfer system.

(3) Bulk-end user. -- A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

(4) Bulk plant. -- A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(5) Code. -- Defined in G.S. 105-228.90.

(6) Destination state. -- The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

(7) Diesel fuel. -- Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes kerosene. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.

(8) Distributor. -- A person who acquires motor fuel from a supplier or from another distributor for subsequent sale.

(9) Dyed diesel fuel. -- Diesel fuel that meets the dyeing and marking requirements of § 4082 of the Code.

(10) Elective supplier. -- A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

(11) Export. -- To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

(12) Fuel alcohol. -- Methanol or fuel grade ethanol.

(13) Fuel alcohol provider. -- A person who does any of the following:

a. Produces fuel alcohol.

b. Imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank car.

(14) Gasohol. -- A blended fuel composed of gasoline and fuel grade ethanol.

(15) Gasoline. -- Any of the following:

a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products used as racing fuel that ~~have an American Society for Testing Materials octane number of less than 75 as determined by the motor method.~~ meet any of the following descriptions:

1. Have an Antiknock Index Number of less than 80,

2. Have an Antiknock Index Number of more than 100, contain more than 0.05 grams per gallon of lead, and have a 90 percent (90%) evaporation at a maximum of 290 degrees Fahrenheit as determined by the American Society for Testing and Materials Test Method D 86,

3. Have an Antiknock Index Number of more than 100, contain more than 2.8 weight percent oxygen, and have a 90 percent (90%) evaporation at a maximum temperature of 290 degrees Fahrenheit as determined by the American Society for Testing and Materials Test Method D 86.

b. A petroleum product component of gasoline, such as naptha, reformate, or toluene.

c. Gasohol.

d. Fuel grade ethanol.

The term does not include aviation gasoline sold for use in an aircraft motor. 'Aviation gasoline' is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.

(16) Gross gallons. -- The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

(17) Highway. -- Defined in G.S. 20-4.01(13).

(18) Highway vehicle. -- A self-propelled vehicle that is designed for use on a highway.

(19) Import. -- To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

(19a) In-State-only supplier. -- Either of the following:

a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

b. A supplier that does business only in this State.

(20) Motor fuel. -- Gasoline, diesel fuel, and blended fuel.

(21) Motor fuel rate. -- The rate of tax set in G.S. 105-449.80.

(22) Motor fuel transporter. -- A person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.

(23) Net gallons. -- The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.

(24) Permissive supplier. -- An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.

(25) Person. -- Defined in G.S. 105-228.90.

(26) Position holder. -- The person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

(27) Rack. -- A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car,

or another means of transfer that is outside the terminal transfer system.

(28) Removal. -- A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

(29) Retailer. -- A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.

(30) Secretary. -- Defined in G.S. 105-228.90.

(31) Supplier. -- Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party ~~exchange.~~ transaction.

b. A fuel alcohol provider.

(32) System transfer. -- Either of the following:

a. A transfer of motor fuel within the terminal transfer system.

b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.

(33) Tank wagon. -- A truck that is not a transport truck and has multiple compartments designed or used to carry motor fuel.

(33a) Tax. -- An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.

(34) Terminal. -- A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.

(35) Terminal operator. -- A person who owns, operates, or otherwise controls a terminal.

(36) Terminal transfer system. -- The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as 'bulk transfer/terminal system' under 26 C.F.R. § 48.4081-1.

(37) Transmix. -- Either of the following:

a. The buffer or interface between two different products in a pipeline shipment.

b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.

(38) Transport truck. -- A semitrailer combination rig designed or used to transport loads of motor fuel over a highway.

(39) Trustee. -- A person who is licensed as a supplier, an elective supplier, or a permissive supplier and who receives tax payments from and on behalf of a licensed distributor.

(40) Two-party ~~exchange.~~ transaction. -- A transaction in which motor fuel is transferred from one licensed supplier to another licensed

supplier pursuant to an exchange agreement or a sale whereby the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

(41) User. -- A person who owns or operates a licensed highway vehicle and does not maintain storage facilities for motor fuel."

Section 4. G.S. 105-449.72 is amended by adding the following new subsection to read:

"(d) Replacements. -- When a license holder files a bond or an irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the license holder has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions:

(1) Return the previously filed bond or letter of credit.

(2) Notify the person liable on the previously filed bond and the license holder that the person is released from liability on the bond."

Section 5. G.S. 105-449.87(b) reads as rewritten:

"(b) Liability. -- The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end seller is jointly and severally liable for the tax. If the Secretary determines that a bulk-end user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

Section 6. G.S. 105-449.88 reads as rewritten:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state.

(2) Motor fuel sold to the federal government.

(3) Motor fuel sold to the State for its use.

(4) Motor fuel sold to a local board of education for use in the public school system.

(5) Diesel that is kerosene and is sold to an airport."

Section 7. G.S. 105-449.94 is amended by adding the following new subsection to read:

"(e) Liability. -- A licensed distributor or a licensed importer that deducts an exempt sale when paying tax to a supplier and does not report the sale by filing the return required by this section is liable for a penalty. The penalty is the amount of

tax that would have been payable on the sale of the fuel if the distributor or importer had not claimed the sale as an exempt sale."

Section 8. Part 5 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-449.105A. Monthly refunds for kerosene.**

A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene during the preceding month, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for heating.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that is marked for nonhighway use in accordance with the requirements in G.S. 105-449.123(a)(1) through (a)(3) and has a dispensing device that is not suitable for use in fueling a highway vehicle."

Section 9. G.S. 105-164.13(11)a. reads as rewritten:

"a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105(c) or ~~(d)~~ (d), under G.S. 105-449.105A, or under G.S. 105-449.107."

Section 10. G.S. 105-449.108 reads as rewritten:

"**§ 105-449.108. When an application for a refund is due.**

(a) ~~Annual Refunds. -- An application for an annual refund of excise tax is due by April 15 following the end of the calendar year for which the refund is claimed. The application must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.~~ Due Dates. -- The due dates of applications for refunds are as follows:

Refund Period	Due Date
Annual	April 15 after the end of the year
Quarterly	Last day of the month after the end of the quarter
Monthly	22nd day after the end of the month
Upon Application	Last day of month after month in which tax was paid or the event occurred that is the basis of the refund.

(b) ~~Quarterly Refunds. -- An application for a quarterly refund of excise tax is due by the last day of the month following the end of the calendar quarter for which the refund is claimed. The application must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.~~ Requirements. -- An application for an annual refund must state whether or not the applicant has filed a North Carolina income tax return for the

preceding taxable year. An application for a refund allowed under this Part must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

~~(c) Upon Application. — An application for a refund of excise tax upon application under G.S. 105-449.105 is due by the last day of the month that follows the payment of tax or other event that is the basis of the refund.~~"

Section 11. G.S. 105-449.132 reads as rewritten:

"**§ 105-449.132. How to apply for a license.**

To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. An applicant must meet the requirements for obtaining a license set out in G.S. 105-449.69(b)."

Section 12. The following persons who have kerosene that is on hand or in their possession as of 12:01 a.m. on July 1, 1998, and is not in the terminal transfer system must inventory the kerosene and report the results of the inventory to the Secretary of Revenue:

(1) Retailers who maintain storage facilities for kerosene of at least 2,000 gallons.
(2) Distributors.
(3) Importers.
(4) Suppliers.

The amount of kerosene in dead storage is not considered to be part of inventory and shall not be included in the report. "Dead storage" is the amount of kerosene in a storage tank that will not be pumped out of the tank because the kerosene is below the mouth of the draw pipe. For a storage tank with a capacity of less than 2,000 gallons, the amount of kerosene in dead storage is considered to be 200 gallons. For a storage tank with a capacity of 2,000 gallons or more, the amount of kerosene in dead storage is considered to be 400 gallons. The report of inventory must be made on a form provided by the Secretary. The report is due by July 15, 1998.

Section 13. The change made in Section 1 of this act applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998. The changes made in Sections 3, 5, 6, 8, 9, and 10 become effective July 1, 1998. The remaining sections of this act are effective when they become law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1230 (Third Edition)

SHORT TITLE: Motor Fuel Tax Changes

SPONSOR(S): Senators Kerr, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Highway Fund					
Racing Fuel	($8,154)	($8,154)	($8,154)	($8,154)	($8,154)
Motor Carrier Refunds	($240,000)	($240,000)	($240,000)	($240,000)	($240,000)
	($248,154)	($248,154)	($248,154)	($248,154)	($248,154)
General Fund					
Racing Fuel	$73,429	$73,429	$73,429	$73,429	$73,429
Local Funds					
Racing Fuel	$36,714	$36,714	$36,714	$36,714	$36,714

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue - Motor Fuels Tax Division

EFFECTIVE DATE: The change made in section 1 applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998. The changes made in sections 3,5,6,8,9, and 10 become effective July 1, 1998. The remaining sections are effective when the bill becomes law.

BILL SUMMARY: The bill exempts racing fuel from the motor fuels tax, provides automatic refunds of motor fuel taxes to motor carriers each quarter, clarifies the taxation of kerosene, and makes other changes in the motor fuel tax laws.

ASSUMPTIONS AND METHODOLOGY:

The following sections of SB 1230 have a fiscal impact:

Section 1

A motor carrier operating in North Carolina is taxed on the amount of motor fuel it uses in the state and is entitled to a credit for the motor fuels tax it paid on purchases made in the state. Under current law, a carrier has two years to request a refund when its tax credits exceed its tax liability. If the motor carrier fails to request a refund within two years of tax payment, then the Department of Revenue keeps the overpayment. From 1990 to 1996, the Department of Revenue earned $6 million or approximately $83,300 per quarter from lapsed refunds. Since the complete implementation of the International Fuel Tax Agreement (IFTA) in 1996, motor carriers have been more aggressive in seeking refunds owed to them. Based on a review of the second quarter of 1997, the amount of lapsed refunds was down to $60,000. **Under this bill, carriers would automatically receive refunds and the Highway Fund would no longer receive $240,000 in unanticipated revenues from lapsed refunds each year.**

Section 3

This section exempts racing fuel from the motor fuels tax and subjects the retail price of this fuel to the 6% state and local sales tax. Purchasers of racing fuel now receive a refund of the excise tax minus an administrative and inspection fee equal to 1.25 cents per gallon. Beginning in January 1998, sales tax was imposed on racing fuel based on the average wholesale price of regular motor fuel for the prior 12 months. Based on data supplied by the Department of Revenue, 652,347 gallons of racing fuel were purchased in the North Carolina in 1996. Assuming 1996 racing fuel purchases as the standard, the fiscal impact of this tax change is as follows:

Highway Fund = By exempting racing fuel, **the Highway Fund would lose $8,154 from the administrative and inspection fee.** (652,347 gallons X $.0125)

General Fund = Racing fuel is now subject to the average wholesale price of regular motor fuel. This price was 68.59 cents per gallon in 1997. The average retail price of racing fuel is $3.50 per gallon. This bill will tax motor fuel at the actual retail price as shown in the example below.

6% X 652,347 gallons X $3.50	= $136,993	Retail price
6% X 652,347 gallons X $ .6859	= $ 26,850	Wholesale price
Net Change	$110,143	

The General Fund would receive $73,429 of this increase and local governments would receive $36,714.

Section 7

This section imposes a new penalty on licensed distributors or licensed importers who deduct an exempt sale when paying the excise tax to a supplier and then fail to report the exempt sale when

filing a reconciling return. **The Department anticipates a revenue gain from this penalty, but cannot estimate the amount.**

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington

DATE: June 24, 1998

EXPLANATION OF SENATE BILL 1230(PCS):
Motor Fuel Tax Changes

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 29, 1998
SPONSOR: Senators Kerr, Cochrane, Dalton, Hartsell, and Hoyle

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Senate Bill 1230 is a recommendation of the Revenue Laws Study Committee, and exempts racing fuel from the per gallon excise tax on motor fuel, clarifies the taxation of kerosene, and makes other clarifying and conforming changes to the motor fuel tax laws.

Racing Fuel

Under current law the excise tax on racing fuel is refunded, because racing fuel is used for off highway purposes. **The original bill exempted racing fuel from the motor fuels tax by exempting it from the definition of gasoline. The proposed committee substitute does not change the current definition of gasoline, but instead adds a definition for racing fuel. This definition includes gasoline that meets all of the following descriptions:**

- **Has an Antiknock Index Number of more than 100.**
- **Has 90% evaporation at a maximum of 290 degrees Fahrenheit.**
- **Either contains more than 0.05 grams per gallon of lead or contains more than 2.8 weight percent oxygen.**

The proposed committee substitute also adds "racing fuel dispensed at a race track for use in a racing vehicle" to the list of fuel that is exempt from the motor fuel excise tax.

Senate Bill 1230 relieves the taxpayer of the burden of applying for a refund and the Department of Revenue from having to distribute the refund. The bill also solves current inconsistencies among taxpayers who use racing fuel, and would result in the correct amount of tax being collected with less paper work. The proposed changes regarding racing fuel become effective August 1, 1998.

Kerosene

Senate Bill 1230 clarifies that kerosene is a form of diesel fuel by stating that the term diesel fuel includes kerosene. This is to conform to the Federal Government, who will begin taxing kerosene unless it is dyed effective July 1, 1998. The bill adds diesel fuel that is kerosene and that is sold to an airport to the

list of fuel exempt from the motor fuels tax. The bill also adds a new section to the part of the motor fuels law dealing with refunds, so that a distributor will be allowed to obtain a refund on the sale of kerosene in the following instances: (1) when the distributor sells kerosene to an end user and the distributor dispenses the kerosene into the end user's storage facility that contains fuel used only for heating, or (2) when the distributor sells kerosene to a retailer and the kerosene is dispensed into a storage facility marked for non-highway use and that has a dispensing device that is not suitable to fuel highway vehicles. These proposed changes apply to kerosene sold on or after July 1, 1998.

Senate Bill 1230 provides that persons possessing kerosene as of July 1, 1998, that is not in the terminal transfer system, must inventory the kerosene and report the inventory to the Secretary **The original bill also required these persons to pay tax on the kerosene.** This provision applies to retailers who maintain storage facilities for kerosene of at least 2,000 gallons, distributors, importers, and suppliers. This is a transitional provision and is necessary, because kerosene will be taxed at the rack beginning July 1, 1998. This provision in the bill is effective when it becomes law.

Other Changes to the Motor Fuel Tax Laws

Section 1 of the bill provides for an automatic refund to a motor carrier whose credit exceeds his tax liability. A carrier operating in this State is taxed on the amount of motor fuel the carrier used in the State. The carrier is also entitled to a credit for tax paid by the carrier on any fuel purchased in the State. This section applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998.

Section 2 of the bill is a conforming change requiring a carrier, who denies liability for a penalty, to pay the penalty under protest and then apply to the Department for a hearing. This section is effective when it becomes law.

Section 4 gives the Secretary of Revenue the authority to send a letter of release instead of returning a bond when a license holder files a bond or irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the license holder has paid all taxes and penalties due. The Secretary already has this authority under G.S. 105-449.76, when a license is canceled. This section is effective when it becomes law.

Section 5 provides that if the Secretary determines that a bulk-end user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel was dispensed from a storage facility marked for non-highway use, then all fuel delivered to that storage facility is presumed to have been used for highway use and is taxable. This presumption currently applies to alternative fuels in G.S. 105-449.138(b). This section is effective when it becomes law.

Section 7 imposes a penalty on a licensed distributor or licensed importer when they deduct an exempt sale when paying the excise tax to a supplier and then fail to report the exempt sale when filing a reconciling return showing the exempt sales. **The proposed committee substitute imposes a $250.00 penalty for failure to report. This section becomes effective September 1, 1998 The original bill imposed a penalty in the amount of tax that would have been payable on the sale of the fuel if the distributor or importer had not claimed the sale as an exempt sale and had an effective date of when the section becomes law.**

Section 9 amends G.S. 105-164.13, the statute that sets out exemptions and exclusions from the sales and use tax. This statute lists motor fuel as exempt from the sales and use tax unless a refund of the motor fuel tax is allowed. The bill adds a distributor, who receives a motor fuel tax refund on kerosene sold, to those taxpayers who must pay sales tax on motor fuel.

Section 10 clarifies when applications for refunds of the motor fuel tax are due. This section is effective when it becomes law.

Section 11 requires an applicant for a license as a provider of alternative fuel, a bulk-end user of alternative fuel, or a retailer of alternative fuel to meet the requirements for licensing set out in G.S. 105-449.69(b). This section is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1230

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1230-ALA-001 Page 1 of __

Date_____,1998

Comm. Sub. [yes]
Amends Title []
Third Edition

Representative ~~Brawley~~ Nichols

moves to amend the bill on page 7, lines 19 and 20, by adding the following new sections:

"Section 9(a). G.S. 105-164.3(4) reads as rewritten:

'(4)"Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, cash discounts, labor or service costs, transportation charges or any expenses whatsoever. The cost price of racing fuel, as defined in G.S. 105-449.60, is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rate in effect when the racing fuel is used.'

Section 9(b). G.S. 105-164.3(16) is amended by adding a new sub-subdivision to read:

'g. The sales price of racing fuel, as defined in G.S. 105-449.60, is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rate in effect when the racing fuel is sold.'";

and on page 8, line 34, by rewriting the line to read:

"act becomes effective September 1, 1998. Sections 9(a) and 9(b) become effective August 1, 1998. The remaining sections of this act are".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1230
Second Edition Engrossed 5/27/98
Third Edition Engrossed 6/10/98
Proposed Committee Substitute S1230-PCSA881-LAX001

Short Title: Motor Fuel Tax Changes. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT RACING GASOLINE FROM THE PER GALLON EXCISE TAX, TO CLARIFY THE TAXATION OF KEROSENE, AND TO MAKE OTHER CHANGES IN THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.39 reads as rewritten:

"**§ 105-449.39. Credit for payment of motor fuel tax.**

Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid by the carrier on fuel purchased in the State. A motor carrier who files a quarterly report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. A motor carrier who files an annual report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable cents-per-gallon rates of tax in effect during the year for which the credit is claimed. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a reporting period exceeds the motor carrier's liability for that reporting period, ~~the excess may, in accordance with rules adopted by the Secretary, be refunded to the motor carrier or carried forward and applied to the motor carrier's tax liability for another reporting period. Before the Secretary allows a motor carrier a refund, the Secretary may audit~~

~~the motor carrier's records or require the motor carrier to furnish a bond under G.S. 105-449.40.~~ the Secretary must refund the excess to the motor carrier."

Section 2. G.S. 105-449.52(b) reads as rewritten:

"(b) Hearing. -- Any person denying liability for a penalty imposed under this section ~~may~~ must pay the penalty under protest and apply to the Department of Revenue for a hearing. Upon receiving a request for a hearing, the Secretary shall schedule a hearing before a duly designated employee or agent of the Department within 30 days after receipt of the request. If after the hearing the Department determines that the person was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department determines that the person was liable for the penalty, the person paying the penalty may bring an action in the Superior Court of Wake County against the Secretary of Revenue for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty."

Section 3. G.S. 105-449.60 reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

(1) Antiknock Index Number. -- The arithmetic average of the American Society for Testing and Materials (ASTM) Research octane number (RON) and the ASTM Motor octane number (MON), that is (RON + MON)/2.

~~(1)~~ (1a) Blended fuel. -- A mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

(2) Blender. -- A person who produces blended fuel outside the terminal transfer system.

(3) Bulk-end user. -- A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

(4) Bulk plant. -- A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(5) Code. -- Defined in G.S. 105-228.90.

(6) Destination state. -- The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

(7) Diesel fuel. -- Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes kerosene. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.

(8) Distributor. -- A person who acquires motor fuel from a supplier or from another distributor for subsequent sale.

(9) Dyed diesel fuel. -- Diesel fuel that meets the dyeing and marking requirements of § 4082 of the Code.

(10) Elective supplier. -- A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

(11) Export. -- To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

(12) Fuel alcohol. -- Methanol or fuel grade ethanol.

(13) Fuel alcohol provider. -- A person who does any of the following:

a. Produces fuel alcohol.

b. Imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank car.

(14) Gasohol. -- A blended fuel composed of gasoline and fuel grade ethanol.

(15) Gasoline. -- Any of the following:

a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method.

b. A petroleum product component of gasoline, such as naptha, reformate, or toluene.

c. Gasohol.

d. Fuel grade ethanol.

The term does not include aviation gasoline sold for use in an aircraft motor. 'Aviation gasoline' is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.

(16) Gross gallons. -- The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

(17) Highway. -- Defined in G.S. 20-4.01(13).

(18) Highway vehicle. -- A self-propelled vehicle that is designed for use on a highway.

(19) Import. -- To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this

State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

(19a) In-State-only supplier. -- Either of the following:

a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

b. A supplier that does business only in this State.

(20) Motor fuel. -- Gasoline, diesel fuel, and blended fuel.

(21) Motor fuel rate. -- The rate of tax set in G.S. 105-449.80.

(22) Motor fuel transporter. -- A person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.

(23) Net gallons. -- The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.

(24) Permissive supplier. -- An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.

(25) Person. -- Defined in G.S. 105-228.90.

(26) Position holder. -- The person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

(26a) Racing fuel. -- Gasoline that meets all of the following descriptions:

a. Has an Antiknock Index Number of more than 100.

b. Has 90 percent (90%) evaporation at a maximum temperature of 290 degrees Fahrenheit as determined by the American Society for Testing and Materials Test Method D 86.

c. Either contains more than 0.05 grams per gallon of lead or contains more than 2.8 weight percent oxygen.

(27) Rack. -- A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.

(28) Removal. -- A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

(29) Retailer. -- A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.

(30) Secretary. -- Defined in G.S. 105-228.90.

(31) Supplier. -- Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party ~~exchange.~~ transaction.

b. A fuel alcohol provider.

(32) System transfer. -- Either of the following:

a. A transfer of motor fuel within the terminal transfer system.

b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.

(33) Tank wagon. -- A truck that is not a transport truck and has multiple compartments designed or used to carry motor fuel.

(33a) Tax. -- An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.

(34) Terminal. -- A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.

(35) Terminal operator. -- A person who owns, operates, or otherwise controls a terminal.

(36) Terminal transfer system. -- The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as 'bulk transfer/terminal system' under 26 C.F.R. § 48.4081-1.

(37) Transmix. -- Either of the following:

a. The buffer or interface between two different products in a pipeline shipment.

b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.

(38) Transport truck. -- A semitrailer combination rig designed or used to transport loads of motor fuel over a highway.

(39) Trustee. -- A person who is licensed as a supplier, an elective supplier, or a permissive supplier and who receives tax payments from and on behalf of a licensed distributor.

(40) Two-party ~~exchange.~~ transaction. -- A transaction in which motor fuel is transferred ~~from one licensed supplier to another licensed supplier pursuant to an exchange agreement whereby the supplier that is the position holder agrees~~ between two licensed suppliers as the motor fuel crosses the terminal rack as the result of an exchange agreement or a sale between the suppliers that requires the supplier that is the position holder to deliver motor fuel to

the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

(41) User. -- A person who owns or operates a licensed highway vehicle and does not maintain storage facilities for motor fuel."

Section 4. G.S. 105-449.72 is amended by adding the following new subsection to read:

"(d) Replacements. -- When a license holder files a bond or an irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the license holder has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions:

(1) Return the previously filed bond or letter of credit.

(2) Notify the person liable on the previously filed bond and the license holder that the person is released from liability on the bond."

Section 5. G.S. 105-449.87(b) reads as rewritten:

"(b) Liability. -- The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end seller is jointly and severally liable for the tax. If the Secretary determines that a bulk-end user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

Section 6. G.S. 105-449.88 reads as rewritten:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state.

(2) Motor fuel sold to the federal government.

(3) Motor fuel sold to the State for its use.

(4) Motor fuel sold to a local board of education for use in the public school system.

(5) Diesel that is kerosene and is sold to an airport.

(6) Racing fuel dispensed at a race track for use in a racing vehicle."

Section 7. G.S. 105-449.94 is amended by adding the following new subsection to read:

"(e) Penalty. -- A licensed distributor or a licensed importer that deducts an exempt sale when paying tax to a supplier and does not report the sale by filing the

return required by this section is liable for a penalty of two hundred fifty dollars ($250.00)."

Section 8. Part 5 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-449.105A. Monthly refunds for kerosene.**

A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for heating.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that is marked for nonhighway use in accordance with the requirements in G.S. 105-449.123(a)(1) through (a)(3) and has a dispensing device that is not suitable for use in fueling a highway vehicle."

Section 9. G.S. 105-164.13(11)a. reads as rewritten:

"a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105(c) or ~~(d)~~ (d), under G.S. 105-449.105A, or under G.S. 105-449.107."

Section 9.1. G.S. 105-164.3(4) reads as rewritten:

"(4) 'Cost price' means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, cash discounts, labor or service costs, transportation charges or any expenses whatsoever. The cost price of racing fuel, as defined in G.S. 105-449.60, is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rate in effect when the racing fuel is used."

Section 9.2. G.S. 105-164.3(16) is amended by adding a new sub-subdivision to read:

"g. The sales price of racing fuel, as defined in G.S. 105-449.60, is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rate in effect when the racing fuel is sold."

Section 10. G.S. 105-449.108 reads as rewritten:

"**§ 105-449.108. When an application for a refund is due.**

(a) ~~Annual Refunds. -- An application for an annual refund of excise tax is due by April 15 following the end of the calendar year for which the refund is claimed. The application must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.~~ Due Dates. -- The due dates of applications for refunds are as follows:

Refund Period	Due Date
Annual	April 15 after the end of the year
Quarterly	Last day of the month after the end of the quarter
Monthly	22nd day after the end of the month
Upon Application	Last day of the month after the month in which tax was paid or the event occurred that is the basis of the refund.

(b) ~~Quarterly Refunds. -- An application for a quarterly refund of excise tax is due by the last day of the month following the end of the calendar quarter for which the refund is claimed. The application must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.~~ Requirements. -- An application for an annual refund must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year. An application for a refund allowed under this Part must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

~~(c) Upon Application. -- An application for a refund of excise tax upon application under G.S. 105-449.105 is due by the last day of the month that follows the payment of tax or other event that is the basis of the refund.~~"

Section 11. G.S. 105-449.132 reads as rewritten:

"**§ 105-449.132. How to apply for a license.**

To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. An applicant must meet the requirements for obtaining a license set out in G.S. 105-449.69(b)."

Section 12. The following persons who have kerosene that is on hand or in their possession as of 12:01 a.m. on July 1, 1998, and is not in the terminal transfer system must inventory the kerosene and report the results of the inventory to the Secretary of Revenue:

(1) Retailers who maintain storage facilities for kerosene of at least 2,000 gallons.
(2) Distributors.
(3) Importers.
(4) Suppliers.

The amount of kerosene in dead storage is not considered to be part of inventory and shall not be included in the report. "Dead storage" is the amount of kerosene in a storage tank that will not be pumped out of the tank because the kerosene is below the mouth of the draw pipe. For a storage tank with a capacity of less than 2,000 gallons, the amount of kerosene in dead storage is considered to be 200 gallons. For a storage tank with a capacity of 2,000 gallons or more, the amount of kerosene in dead storage is considered to be 400 gallons. The report of inventory must be made on a form provided by the Secretary. The report is due by July 15, 1998.

Section 13. Section 3 of this act becomes effective August 1, 1998. G.S. 105-449.88(5), as enacted by Section 6 of this act, is effective when it becomes law and applies to kerosene sold on or after July 1, 1998, and G.S. 105-449.88(6), as enacted by Section 6 of this act, becomes effective August 1, 1998. Section 7 of this act becomes effective September 1, 1998. Sections 9.1 and 9.2 become effective August 1, 1998. The remaining sections of this act are effective when they become law; Section 1 applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998, and Sections 8 and 9 of this act apply to kerosene sold on or after July 1, 1998.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
S.B. 1230 A BILL TO BE ENTITLED AN ACT TO EXEMPT RACING GASOLINE FROM THE PER GALLON EXCISE TAX, TO CLARIFY THE TAXATION OF KEROSENE, AND TO MAKE OTHER CHANGES IN THE MOTOR FUEL TAX LAWS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1252
Finance Committee Substitute Adopted 6/16/98

Short Title: Simplify Privilege License Tax. (Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY AND MODIFY PRIVILEGE LICENSE AND EXCISE TAXES AND RELATED PERMIT FEES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 2 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2.

"~~Schedule B. License~~ Privilege Taxes."

Section 2. G.S. 105-33 reads as rewritten:

"**§ 105-33. Taxes under this Article.**

(a) General. -- Taxes in this Article ~~or schedule shall be~~ are imposed ~~as State license taxes~~ for the privilege of carrying on the business, exercising the privilege, or doing the act ~~named,~~ named. ~~and nothing in this Article shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this Article or schedule: Provided, the obtaining of a license required by this Article shall not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required.~~

(b) ~~If the business made taxable or the privilege to be exercised under this Article is carried on at two or more separate places, a separate State license for each place is required.~~ License Taxes. -- A license tax imposed by this Article is an annual tax. The tax is due by July 1 of each year. The tax is imposed for the privilege of engaging in a specified activity during the fiscal year that begins on the July 1 due date of the tax. The full amount of a license tax applies to a person who, during a

fiscal year, begins to engage in an activity for which this Article requires a license. Before a person engages in an activity for which this Article requires a license, the person must obtain the required license.

(c) ~~Every State license issued under this Article or schedule shall be for 12 months, shall expire on the thirtieth day of June of each year, and shall be for the full amount of tax prescribed; provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirtieth day of June of each year, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirtieth day of June, next following. Every county, city and town license issued under this Article or schedule shall be for 12 months, and shall expire on the thirty first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year of such municipality, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.~~ Other Taxes. -- The taxes imposed by this Article on a percentage basis or another basis are due as specified in this Article.

~~(d) The State license issued under G.S. 105-41 is a personal privilege to conduct the profession or business named in the State license, is not transferable to any other person, and does not limit the person named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article. Other licenses issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at that location for the balance of the tax year. If the holder of a license under this Article moves the business for which a license tax has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars ($5.00) for each license certificate reissued.~~

(e) Repealed by Session Laws 1989, c. 584, s. 1.

~~(f) All State taxes imposed by this Article shall be paid to the Secretary of Revenue, or to one of his deputies; shall be due and payable on or before the first day of July of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent State license and privilege taxes; provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this Article or schedule after the thirtieth day of June and prior to the thirtieth day of the following June of any year, then such person, firm, or corporation shall apply for and obtain a State license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege;~~

~~and a failure to so apply and to obtain such State license shall be and constitute a delinquent payment of the State license tax due, and such person, firm, or corporation shall be subject to the remedies available and penalties imposed for the payment of such delinquent taxes.~~

~~(g) The taxes imposed and the rates specified in this Article or schedule shall apply to the subjects taxed on and after the first day of June, 1939, and prior to said date the taxes imposed and the rates specified in the Revenue Act of 1937 shall apply.~~

(h) Liability Upon Transfer. -- ~~It shall be the duty of a~~ A grantee, transferee, or purchaser of any business or property subject to the State ~~license~~ taxes imposed in this Article ~~to~~ must make diligent inquiry as to whether the State ~~license~~ tax has been ~~paid, but when such~~ paid. If the business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the State ~~license~~ taxes imposed under this Article, ~~such~~ the property, while in the possession of ~~such~~ the innocent purchaser, ~~shall not be~~ is not subject to any lien for ~~such State license~~ the taxes.

~~(i) The tax collector of a county or city shall issue licenses required under this Article by the governing body of the county or city and shall collect the taxes due for these licenses.~~

~~(j) Any person, firm, or corporation who shall wilfully make any false statement in an application for a license under any section of this Article or schedule shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than the amount of tax specified under such section, and shall be in addition to the amount of such tax.~~

(k) Repealed by Session Laws 1987, c. 190."

Section 3. G.S. 105-33.1 reads as rewritten:

"**§ 105-33.1. Definitions.**

The following definitions apply in this Article:

(1) City. -- Defined in G.S. 105-228.90.

~~(1)~~ (1a) Code. -- Defined in G.S. 105-228.90.

~~(2) Municipality. -- A municipal corporation organized under the laws of this State.~~

(3) Person. -- Defined in G.S. 105-228.90.

(4) Secretary. -- ~~The Secretary of Revenue.~~ Defined in G.S. 105-228.90."

Section 4. G.S.105-37.1 reads as rewritten:

"**§ 105-37.1. Amusements -- Forms of amusement not otherwise taxed.**

(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving, ~~offering~~ offering, or managing any form of entertainment or amusement not otherwise taxed ~~or specifically exempted in~~ under this Article, for which an admission is charged, shall pay ~~an annual license tax of fifty dollars ($50.00) for each room, hall, tent or other place where such admission charges are made.~~

~~In addition to the license tax levied above, such person, firm, or corporation shall pay an additional~~ a tax upon the gross receipts of ~~such~~ the business at the rate of

three percent (3%). Reports shall be made to the Secretary ~~of Revenue, in such form as he may prescribe,~~ within the first 10 days of each month covering all ~~such~~ the gross receipts for the previous month, and the ~~additional~~ tax ~~herein levied~~ shall be paid monthly at the time ~~such~~ the reports are made. ~~The annual license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the annual license tax shall be applied as a credit upon or advance payment of the gross receipts tax.~~

Every ~~person, firm, or corporation~~ person giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay ~~an annual license tax of fifty dollars ($50.00) for each location where such charges are made, and, in addition,~~ a tax upon the gross receipts derived from admission charges at the rate of three percent (3%). The ~~additional~~ tax upon gross receipts shall be levied and collected ~~in accordance with such regulations as may be made by the Secretary of Revenue.~~ as prescribed by the Secretary. ~~No tax shall be levied on admission fees for high school and elementary school contests.~~

~~Dances and other amusements actually promoted and managed by civic organizations and private and public secondary schools, shall not be subject to the license tax imposed by this section and the first one thousand dollars ($1,000) of gross receipts derived from such events shall be exempt from the gross receipts tax herein levied when the entire proceeds of such dances or other amusements are used exclusively for the school or civic and charitable purposes of such organizations and not to defray the expenses of the organization conducting such dance or amusement. The mere sponsorship of dance or other amusement by such a school, civic, or fraternal organization shall not be deemed to exempt such dance or other amusement as provided in this paragraph, but the exemption shall apply only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization and the proceeds are used as herein before required.~~

~~Dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts are exempt from the license tax and the gross receipts tax imposed under this section if the dance or other amusement is held at the center. "Qualifying corporation" means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). "Center for the performing and visual arts" means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms and similar accommodations to organized arts groups and individual artists. This exemption shall not apply to athletic events.~~

~~The license and gross receipts taxes imposed by this section do not apply to a person, firm, or corporation that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A "teen center" is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.~~

(b) Counties shall not levy any license tax on the business taxed under this section, but cities ~~and towns~~ may levy a license tax not in excess of ~~one half the base tax levied herein.~~ twenty-five dollars ($25.00).

~~(c) No tax shall be collected pursuant to this section with respect to entertainments or amusements offered or given on the Cherokee Indian reservation when the person, firm or corporation giving, offering or managing such entertainment or amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council.~~

~~(d) It is not the purpose of this Article to discourage agricultural fairs in the State, and to further this cause, no carnival company taxable under this section may play a "still date" in any county where there is a regularly advertised agricultural fair, 30 days prior to the dates of the fair. This subsection does not restrict the date on which a fair or tobacco festival may be held if (i) it is held by a veteran's organization or post chartered by Congress or organized and operated on a statewide or nationwide basis and (ii) the organization or post has held the fair or festival annually since before July 1, 1988.~~"

Section 5. G.S. 105-38 reads as rewritten:

"**§ 105-38. Amusements -- ~~Circuses, menageries, wild west, dog and/or pony shows, etc.~~ Circuses and other traveling amusements.**

(a) Every ~~person, firm, or corporation~~ person engaged in the business of exhibiting performances, such as a circus, menagerie, wild west show, dog and/or pony show, or any other similar show, ~~exhibition~~ exhibition, or ~~performance similar thereto,~~ performance not taxed in other sections of this Article, shall ~~apply for and obtain a State license from the Secretary of Revenue for the privilege of engaging in such business, and pay for such license a tax of fifty dollars ($50.00) for each day or part of a day for each place in the State where exhibitions or performances are to be given.~~ pay a tax upon the gross receipts of the business at the rate of three percent (3%).

(b) Every ~~person, firm, or corporation~~ person by whom any show or exhibition taxed under this section is owned or controlled shall file with the ~~Secretary of Revenue,~~ Secretary, not less than five days before entering this State for the purpose of ~~such~~ the exhibitions or performances therein, a statement, under oath, setting out in detail the dates, times, and places for the exhibitions or performances. ~~such information as may be required by the Secretary of Revenue covering the places in the State where exhibitions or performances are to be given, the character of the exhibitions, and such other and further information as may be required. Upon receipt of such statement, the Secretary of Revenue shall fix and determine the amount of State license tax with which such person, firm, or corporation is chargeable, shall endorse his findings upon such statement, and shall transmit a copy of such statement and findings to each such person, firm, or corporation to be charged, to the sheriff or tax collector of each county in which exhibitions or performances are to be given, and to the division deputy of the Secretary of Revenue, with full and particular instructions as to the State license tax to be paid. Before giving any of the exhibitions or performances provided for in such statement, the person, firm, or corporation making such statement shall pay the Secretary of Revenue the tax so fixed and determined. If one or more of such exhibitions or performances included in such statement and for which the tax has been paid shall be canceled, the Secretary of~~

~~Revenue may, upon proper application made to him, refund the tax for such canceled exhibitions or performances. Every such person, firm, or corporation shall give to the Secretary of Revenue a notice of not less than five days before giving any of such exhibitions or performances in each county.~~

~~(c) The sheriff of each county in which such exhibitions or performances are advertised to be exhibited shall promptly communicate such information to the Secretary of Revenue; and if the statement required in this section has not been filed as provided herein, or not filed in time for certified copies thereof, with proper instructions, to be transmitted to the sheriffs of the several counties and the division deputy, the Secretary of Revenue shall cause his division deputy to attend at one or more points in the State where such exhibitions or performances are advertised or expected to exhibit, for the purpose of securing such statement prescribed in this section, of fixing and determining the amount of State license tax with which such person, firm, or corporation is taxable, and to collect such tax or give instructions for the collection of such tax.~~

~~(d) Every such person, firm, or corporation by whom or which any such exhibition or performance described in this section is given in any county, city or town, or within five miles thereof, wherein is held an annual agricultural fair, during the week of such annual agricultural fair, shall pay a State license of one thousand dollars ($1,000) for each exhibition or performance in addition to the license tax first levied in this section, to be assessed and collected by the Secretary of Revenue or his duly authorized deputy.~~

~~(e) The provisions of this section, or any other section of this Article, shall not be construed to allow without the payment of the tax imposed in this section, any exhibition or performance described in this section for charitable, benevolent, educational, or any other purpose whatsoever, by any person, firm, or corporation who is engaged in giving such exhibitions or performances, no matter what terms of contract may be entered into or under what auspices such exhibitions or performances are given. It being the intent and purpose of this section that every person, firm, or corporation who or which is engaged in the business of giving such exhibitions or performances, whether a part or all of the proceeds are for charitable, benevolent, educational, or other purposes or not, shall pay the State license tax imposed in this section.~~

~~(f) Upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of three percent (3%). The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The Secretary of Revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervision as may be necessary to effectuate the purpose of this Subchapter.~~

(g) Repealed.

(h) ~~Counties, cities, and towns~~ Counties and cities may levy a license tax on the business taxed under this section not in excess of ~~one-half of the license tax levied by the State, but shall not levy a parade tax or a tax under subsection (g) of this section.~~ twenty-five dollars ($25.00) for each day or part of a day for each place where exhibitions or performances are to be given."

Section 6. G.S. 105-40 reads as rewritten:

"**§ 105-40. Amusements ~~Certain exhibitions, performances, and entertainments~~ exempt from ~~license~~ tax.**

The following forms of amusement are exempt from the taxes imposed under this Article:

(1) All exhibitions, performances, and entertainments, except as in this Article expressly mentioned as not exempt, produced by local talent exclusively, ~~and~~ for the benefit of religious, charitable, benevolent or educational purposes, ~~and where~~ as long as no compensation is paid to ~~such local talent shall be exempt from the State license tax.~~ the local talent.

(2) The North Carolina Symphony Society, Incorporated, as specified in G.S. 140-10.1.

(3) All exhibits, shows, attractions, and amusements operated by a society or association organized under the provisions of Chapter 106 of the General Statutes where the society or association has obtained a permit from the Secretary to operate without the payment of taxes under this Article.

(4) All outdoor historical dramas, as specified in Article 19C of Chapter 143 of the General Statutes.

(5) All elementary and secondary school athletic contests, dances, and other amusements.

(6) The first one thousand dollars ($1,000) of gross receipts derived from dances and other amusements actually promoted and managed by civic organizations when the entire proceeds of the dances or other amusements are used exclusively for civic and charitable purposes of the organizations and not to defray the expenses of the organization conducting the dance or amusement. The mere sponsorship of a dance or another amusement by a civic or fraternal organization does not exempt the dance or other amusement, because the exemption applies only when the dance or amusement is actually managed and conducted by the civic or fraternal organization.

(7) All dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts if the dance or other amusement is held at the center. 'Qualifying corporation' means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). 'Center for the performing and visual arts' means a facility, having a fixed

location, that provides space for dramatic performances, studios, classrooms, and similar accommodations to organized arts groups and individual artists. This exemption does not apply to athletic events.

(8) A person that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A 'teen center' is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.

(9) All entertainments or amusements offered or given on the Cherokee Indian reservation when the person giving, offering, or managing the entertainment or amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council."

Section 7. G.S. 105-41 reads as rewritten:

"**§ 105-41. Attorneys-at-law and other professionals.**

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ~~($50.00); the tax does not apply to an individual who is at least 75 years old.~~ ($50.00).

(1) An attorney-at-law.

(2) A physician, a veterinarian, a surgeon, an osteopath, a chiropractor, a chiropodist, a dentist, an ophthalmologist, an optician, an optometrist, or another person who practices a professional art of healing.

(3) A professional engineer, as defined in G.S. 89C-3.

(4) A registered land surveyor, as defined in G.S. 89C-3.

(5) An architect.

(6) A landscape architect.

(7) A photographer, a canvasser for any photographer, or an agent of a photographer in transmitting photographs to be copied, enlarged, or colored.

(8) A real estate broker or a real estate salesman, as defined in G.S. 93A-2. A real estate broker or a real estate salesman who is also a real estate appraiser is required to obtain only one license under this section to cover both activities.

(9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser who is also a real estate broker or a real estate salesman is required to obtain only one license under this section to cover both activities.

(10) A person who solicits or negotiates loans on real estate as agent for another for a commission, brokerage, or other compensation.

(11) A mortician or embalmer licensed under G.S. 90-210.25.

(b) ~~Persons practicing the professional art of healing for a fee or reward shall be exempt from the payment of the license tax levied in the preceding paragraph of this section, if such persons are adherents of established churches or religious organizations and confine their healing practice to prayer or spiritual means.~~ The following persons are exempt from the tax:

(1) A person who is at least 75 years old.

(2) A person practicing the professional art of healing for a fee or reward, if the person is an adherent of an established church or religious organization and confines the healing practice to prayer or spiritual means.

(3) A blind person engaging in a trade or profession as a sole proprietor. A 'blind person' means any person who is totally blind or whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or where the widest diameter of visual field subtends an angle no greater than 20 degrees. This exemption shall not extend to any sole proprietor who permits more than one person other than the proprietor to work regularly in connection with the trade or profession for remuneration or recompense of any kind, unless the other person in excess of one so remunerated is a blind person.

(c) Every person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license fifty dollars ($50.00), and in addition shall pay a license of twelve dollars and fifty cents ($12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts.

~~(d) Every licensed mortician or embalmer shall in like manner apply for and obtain from the Secretary of Revenue a statewide license for practicing his profession, whether for himself or in the employ of another, and pay for such license a tax of fifty dollars ($50.00).~~

(e) Licenses issued under this section are issued as personal privilege licenses and shall not be issued in the name of a firm or ~~corporation: Provided, that a~~ corporation. A licensed photographer having a located place of business in this ~~State, shall be~~ State is liable for a license tax on each agent or ~~solicitor,~~ solicitor employed by ~~him~~ the photographer for soliciting business. If any person engages in more than one of the activities for which a privilege tax is levied by this section, ~~such~~ the person ~~shall be~~ is liable for a privilege tax with respect to each activity engaged in.

(f) Repealed by Session Laws 1981, c. 17.

~~(g) License Revocable for Failure To Pay Tax. Whenever it shall be made to appear to any judge of the superior court that any person practicing any profession for which the payment of a license tax is required by this section has failed, or fails, to pay the professional tax levied in this section, and execution has been issued for the same by the Secretary of Revenue and returned by the proper officer "no property to be found," or returned for other cause without payment of the tax, it shall~~

~~be the duty of the judge presiding in the superior court of the county in which such person resides, upon presentation therefor, to cause the clerk of said court to issue a rule requiring such person to show cause by the next session of court why such person should not be deprived of license to practice such profession for failure to pay such professional tax. Such rule shall be served by the sheriff upon said person 20 days before the next session of the court, and if at the return term of court such person fails to show sufficient cause, the said judge may enter a judgment suspending the professional license of such person until all such tax as may be due shall have been paid, and such order of suspension shall be binding upon all courts, boards and commission having authority of law in this State with respect to the granting or continuing of license to practice any such profession.~~

(h) ~~Counties, cities, or towns shall~~ Cities may not levy any license tax on the business or professions taxed under this ~~section;~~ section. ~~and the statewide license herein provided for shall privilege the licensee to engage in such business or profession in every county, city, or town in this State.~~

(i) Obtaining a license required by this Article does not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required."

Section 8. Chapter 93B of the General Statutes is amended by adding the following new section to read:

"**§ 93B-15. Payment of license fees by members of the armed forces.**

An individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return is granted an extension of time to pay any license fee charged by an occupational licensing board or as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax."

Section 9. G.S. 105-83 reads as rewritten:

"**§ 105-83. Installment paper dealers.**

(a) Every person engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of ~~debt, where~~ debt for which, at the time of or in connection with the execution of ~~said~~ the instruments, a lien is reserved or taken upon personal property located in this State to secure the payment of ~~such~~ the obligations, ~~shall apply for and obtain from the Secretary a State license for the privilege of engaging in such business or for the purchasing of such obligations in this State, and shall pay for such license an annual tax of one hundred dollars ($100.00).~~

~~(b) In addition to obtaining a State license from the Secretary, each person subject to the tax levied in subsection (a)~~ shall submit to the Secretary quarterly no later than the twentieth day of January, April, July, and October of each year, upon forms prescribed by the Secretary, a full, accurate, and complete statement, verified by the officer, agent, or person making the statement, of the total face value of the ~~installment paper, notes, bonds, contracts, and evidences of debt~~ obligations dealt in, bought, or discounted within the preceding three calendar months and, at the same time, shall pay a tax of ~~two hundred and seventy-five thousandths of one percent~~

~~(.275%)~~ two hundred seventy-seven thousandths of one percent (.277%) of the face value of these obligations.

(c) If any person deals in, buys, or discounts any obligations described in this section without ~~obtaining the license required by this section or~~ paying a tax imposed by this section, the person may not bring an action in a State court to enforce collection of an obligation dealt in, bought, or discounted during the period of noncompliance with this section until the person ~~obtains the license and~~ pays the amount of tax, penalties, and interest due.

(d) This section does not apply to corporations liable for the tax levied under G.S. 105-102.3.

(e) ~~Counties, cities, and towns~~ Cities shall not levy any license tax on the business taxed under this section."

Section 10. G.S. 105-102.3 reads as rewritten:

"**§ 105-102.3. Banks.**

There is ~~hereby~~ imposed upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, ~~be~~ is organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, an annual privilege ~~tax~~ tax. A report and the privilege tax are due by the first day of July of each year on forms provided by the Secretary. The tax rate is ~~in the amount of~~ thirty dollars ($30.00) for each one million dollars ($1,000,000) or fractional part thereof of total assets held as ~~hereinafter provided.~~ provided in this section. The assets upon which the tax is levied shall be determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory ~~authorities; provided,~~ authorities. If a bank has been in operation less than a calendar year, then the assets upon which the tax is levied shall be determined by multiplying the average of the total assets by a fraction, the denominator of which is 365 and the numerator of which is the number of days of operation. ~~however, where a new bank commences operations within the State there shall be levied and paid an annual privilege tax of one hundred dollars ($100.00) until such bank shall have made four quarterly call reports of condition (consolidating domestic subsidiaries) for a single calendar year; provided further, however, where~~ If a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an in-state bank with one or more branches outside this State, the assets of the out-of-state bank or of the in-state bank upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the out-of-state bank or of the in-

state bank which are employed outside this State. The tax imposed ~~hereunder~~ in this section shall be for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. ~~Counties, cities and towns shall~~ Cities may not levy a license or privilege tax on the businesses taxed under this section, nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5."

Section 11. G.S. 105-102.6(d) reads as rewritten:

"(d) Tax. -- Every publisher shall apply for and obtain from the Secretary a newsprint publisher tax reporting number and shall file an annual report with the Secretary by January 31 of each year. The report shall include the following information for the preceding calendar year:

(1) Tonnage of virgin newsprint consumed.
(2) Tonnage of nonvirgin newsprint consumed.
(3) Gross tonnage of newsprint consumed.
(4) Itemized percentages of recycled postconsumer recovered paper contained in tonnage of nonvirgin newsprint consumed.
(5) Recycled content tonnage.
(6) Recycled content percentage.
(7) Recycling tonnage.

In addition, each publisher whose recycled content percentage for a calendar year is less than the applicable minimum recycled content percentage provided in subsection (c) shall pay a tax of fifteen dollars ($15.00) on each ton by which the publisher's recycled content tonnage falls short of the tonnage of recycled postconsumer recovered paper needed to achieve the applicable minimum recycled content percentage provided in subsection (c). This tax is due when the report is filed. No ~~county or municipality~~ city may impose a license tax on the business taxed under this section."

Section 12. G.S. 105-107 is repealed.

Section 13. G.S. 105-109(a) is repealed.

Section 14. G.S. 105-113.68(a)(6) reads as rewritten:

"(6) 'License' means a certificate, issued pursuant to this Article ~~by the Secretary or~~ by a city or county, that authorizes a person to engage in a phase of the alcoholic beverage industry."

Section 15. G.S. 105-113.69 reads as rewritten:

"§ 105-113.69. License tax; effect of license.

The taxes imposed in ~~Parts 2 and 3~~ Part 3 of this Article are license taxes on the privilege of engaging in the activity authorized by the license. Licenses issued ~~by the State or a local government~~ under this Article authorize the licensee to engage in only those activities that are authorized by the corresponding ABC permit. The activities authorized by each retail ABC permit are described in Article 10 of Chapter ~~18B,~~ 18B of the General Statutes and the activities authorized by each commercial ABC permit are described in Article 11 of that Chapter."

Section 16. G.S. 105-113.70 reads as rewritten:

"§ 105-113.70. Issuance, duration, transfer of license.

(a) Issuance, Qualifications. -- Each person who receives an ABC permit shall obtain the corresponding local license, if any, under this Article. ~~All State licenses are issued by the Secretary.~~ All local licenses are issued by the city or county where the establishment for which the license is sought is located. The information required to be provided and the qualifications for a ~~State or~~ local license are the same as the information and qualifications required for the corresponding ABC permit. Upon proper application and payment of the prescribed tax, issuance of a ~~State or~~ local license is mandatory if the applicant holds the corresponding ABC permit. No local license may be issued under this Article until the applicant has received from the ABC Commission the applicable permit for that activity, and no county license may be issued for an establishment located in a city in that county until the applicant has received from the city the applicable license for that activity.

(b) Duration. -- All licenses issued under this section are annual licenses for the period from May 1 to April 30.

(c) Transfer. -- A license may not be transferred from one person to another or from one location to another.

(d) License Exclusive. -- ~~Neither the State nor a~~ A local government may not require a license for activities related to the manufacture or sale of alcoholic beverages other than the licenses stated in this Article."

Section 17. G.S. 105-113.72 is repealed.

Section 18. G.S. 105-113.74 is repealed.

Section 19. G.S. 105-113.75 is repealed.

Section 20. G.S. 105-113.76 is repealed.

Section 21. G.S. 105-113.79 reads as rewritten:

"**§ 105-113.79. City wholesaler license.**

A city may require city malt beverage and wine wholesaler licenses for businesses located inside the city, but may not require a license for a business located outside the city, regardless whether that business sells or delivers malt beverages or wine inside the city. The city may charge an annual tax of not more than ~~twenty-five percent (25%) of the annual tax for the equivalent State license as set by G.S. 105-113.74.~~ thirty-seven dollars and fifty cents ($37.50) for a city malt beverage wholesaler or a city wine wholesaler license."

Section 22. G.S. 105-113.80(a) reads as rewritten:

"(a) Beer. -- An excise tax of fifty-three and one hundred seventy-seven one thousandths cents (53.177¢) per gallon is levied on the sale of malt ~~beverages at the rate of:~~ beverages.

~~(1) Forty-eight and three hundred eighty-seven one thousandths cents (48.387¢) per gallon on malt beverages in barrels holding at least seven and three-fourths gallons; and~~

~~(2) Fifty-three and three hundred seventy-six one thousandths cents (53.376¢) per gallon on malt beverages in cans, bottles, barrels, or other containers holding less than seven and three-fourths gallons.~~"

Section 23. G.S. 105-113.83(c) reads as rewritten:

"(c) Railroad ~~Sales License.~~ Sales. -- ~~This section does not affect the duty of a holder of a State railroad sales license to remit excise taxes on alcoholic beverages sold by that licensee in this State, as provided in G.S. 105-113.76~~ Each person operating a railroad train in this State on which alcoholic beverages are sold must submit monthly reports of the amount of alcoholic beverages sold in this State and must remit the applicable excise tax due on the sale of these beverages when the report is submitted. The report is due on or before the 15th day of the month following the month in which the beverages are sold. The report must be made on a form prescribed by the Secretary."

Section 24. G.S. 105-113.84 reads as rewritten:

"**§ 105-113.84. Invoices; report of resident brewery, resident winery, or nonresident vendor.**

(a) Invoice. -- ~~When a~~ A resident brewery, resident winery, or nonresident vendor that sells or delivers wine or malt beverages to a North Carolina wholesaler or ~~importer,~~ importer ~~he~~ shall give that wholesaler or importer two copies of the sales ~~invoice. He~~ invoice and shall also file one copy with the Secretary. The invoice shall ~~state:~~ state all of the following:

(1) The name and address of the ~~licensee~~ permit holder making the sale or ~~delivery;~~ delivery.

(2) The name, address, and ~~license~~ permit number of the wholesaler or importer receiving the ~~beverages;~~ beverages.

(3) The kind of beverage sold or ~~delivered; and~~ delivered, including the number of cases.

(4) The exact quantities of beverages sold or delivered, specified by size and type of ~~container.~~ containers.

(5) The total gallons of malt beverages, the total liters of unfortified wine, and the total liters of fortified wine.

(b) Monthly Report. -- Each resident brewery, resident winery, or nonresident vendor that sells or delivers wine or malt beverages in North Carolina shall prepare and file with the Secretary a monthly report, on a form provided by the Secretary, stating the exact quantities of those beverages sold to North Carolina wholesalers or importers during the previous month. ~~The report shall specify the size and type of containers sold.~~ The report shall be filed on or before the 15th day of the month following the month in which the beverages are sold or delivered."

Section 25. G.S. 105-113.86 reads as rewritten:

"**§ 105-113.86. Bonds.**

(a) Wholesalers and Importers. -- ~~Each holder of a malt beverage~~ A wholesaler ~~license, a wine wholesaler license, or an~~ or importer ~~license~~ shall furnish a bond in an amount of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ~~($50,000) to cover his tax liability.~~ ($50,000). The bond shall be conditioned on compliance with this Article, shall be payable to the State, shall be in a form acceptable to the Secretary, and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State. The Secretary shall proportion the bond amount to the anticipated tax

liability of the wholesaler or importer. The Secretary shall periodically review the sufficiency of bonds furnished by wholesalers and importers, and shall increase the amount of a bond required of a wholesaler or importer when the amount of the bond furnished no longer covers the wholesaler's or importer's anticipated tax liability.

(b) Nonresident Vendors. -- The Secretary may require the holder of a nonresident vendor ~~license~~ ABC permit to furnish a bond in an amount not to exceed two thousand dollars ($2,000). The bond shall be conditioned on compliance with this Article, shall be payable to the State, shall be in a form acceptable to the Secretary, and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State."

Section 26. G.S. 105-113.89 reads as rewritten:

"**§ 105-113.89. Other applicable administrative provisions.**

The administrative provisions of Article 9 of this Chapter apply to this Article. ~~In addition, the following administrative provisions of Schedule B of this Chapter apply to the license taxes levied under this Article: G.S. 105-103, 105-104, 105-105, 105-108, 105-109, 105-110, and 105-112. In applying the provisions of Schedule B to this Article, the month "May" shall be substituted for the month "July."~~"

Section 27. G.S. 105-249 is repealed.

Section 28. G.S. 105-249.1 is repealed.

Section 29. G.S. 18B-902 reads as rewritten:

"**§ 18B-902. Application for permit; fees.**

(a) Form. -- An application for an ABC permit shall be on a form prescribed by the Commission and shall be notarized. The application shall be signed and sworn to by each person required to qualify under G.S. 18B-900(c).

(b) Investigation. -- Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and the premises for which the permit is requested. The Commission may request the assistance of local ABC officers in investigating applications. An applicant shall cooperate fully with the investigation.

(c) False Information. -- Knowingly making a false statement in an application for an ABC permit shall be grounds for denying, suspending, revoking or taking other action against the permit as provided in G.S. 18B-104 and shall also be unlawful.

(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- ~~$200.00.~~ $400.00.

(2) Off-premises malt beverage permit -- ~~$200.00.~~ $400.00.

(3) On-premises unfortified wine permit -- ~~$200.00.~~ $400.00.

(4) Off-premises unfortified wine permit -- ~~$200.00.~~ $400.00.

(5) On-premises fortified wine permit -- ~~$200.00.~~ $400.00.

(6) Off-premises fortified wine permit -- ~~$200.00.~~ $400.00.

(7) Brown-bagging permit -- ~~$200.00,~~ $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be ~~$100.00.~~ $200.00.

(8) Special occasion permit -- ~~$200.00.~~ $400.00.

(9) Limited special occasion permit -- ~~$25.00.~~ $50.00.
(10) Mixed beverages permit -- ~~$750.00.~~ $1,000.
(11) Culinary permit -- ~~$100.00.~~ $200.00.
(12) Unfortified winery permit -- ~~$150.00.~~ $300.00.
(13) Fortified winery permit -- ~~$150.00.~~ $300.00.
(14) Limited winery permit -- ~~$150.00.~~ $300.00.
(15) Brewery permit -- ~~$150.00.~~ $300.00.
(16) Distillery permit -- ~~$150.00.~~ $300.00.
(17) Fuel alcohol permit -- ~~$50.00.~~ $100.00.
(18) Wine importer permit -- ~~$150.00.~~ $300.00.
(19) Wine wholesaler permit -- ~~$150.00.~~ $300.00.
(20) Malt beverage importer permit -- ~~$150.00.~~ $300.00.
(21) Malt beverage wholesaler permit -- ~~$150.00.~~ $300.00.
(22) Bottler permit -- ~~$150.00.~~ $300.00.
(23) Salesman permit -- ~~$25.00.~~ $100.00.
(24) Vendor representative permit -- ~~$25.00.~~ $50.00.
(25) Nonresident malt beverage vendor permit -- ~~$50.00.~~ $100.00.
(26) Nonresident wine vendor permit -- ~~$50.00.~~ $100.00.
(27) Any special one-time permit under G.S. 18B-1002 -- ~~$25.00.~~ $50.00.
(28) Winery special event permit -- ~~$100.00.~~ $200.00.
(29) Mixed beverages catering permit -- ~~$100.00.~~ $200.00.
(30) Guest room cabinet permit -- ~~$750.00.~~ $1,000.
(31) Liquor importer/bottler permit -- ~~$250.00.~~ $500.00.
(32) Cider and vinegar manufacturer permit -- ~~$100.00.~~ $200.00.
(33) Brew on premises permit -- ~~$200.00.~~ $400.00.

~~(c) Fee for Combined Applications. -- If application is made at the same time for retail malt beverage, unfortified wine and fortified wine permits for a single business location, the total fee for those applications shall be two hundred dollars ($200.00). If application is made at the same time for brown-bagging and special occasion permits for a single business location, the total fee for those applications shall be three hundred dollars ($300.00). If application is made at the same time for wine and malt beverage importer permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made at the same time for wine and malt beverage wholesaler permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made at the same time for nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for those applications shall be fifty dollars ($50.00).~~

(f) Fee Not Refundable. -- The fee required by subsection (d) shall not be refunded.

(g) Fees to Treasurer. -- All fees collected by the Commission under this or any other section of this Chapter shall be remitted to the State Treasurer for the General Fund."

Section 30. G.S. 18B-903(b) reads as rewritten:

"(b) Renewal. -- Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for each mixed beverages permit and each guest room cabinet permit shall be ~~five~~ seven hundred fifty dollars ~~($500.00).~~ ($750.00). A renewal fee shall not be refundable."

Section 31. Sections 1 through 13, 27, and 28 of this act become effective July 1, 1999. The remaining sections of this act become effective May 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1252 (Second Edition)

SHORT TITLE: Simplify Privilege License Tax

SPONSOR(S): Senators Hoyle, Cochrane, Kerr, and Hartsell

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
No Half Year License		$14,375	$14,375	$14,375	$14,375
Amusements		**No Impact**			
Banks		1,400	1,400	1,400	1,400
Installment Paper Dealers		(10,990)	(10,990)	(10,990)	(10,990)
ABC Licenses & Permits		**Revenue Neutral**			
Beer Excise Tax		**Revenue Neutral**			
Net Change - G.F. Revenue		**$4,785**	**$4,785**	**$4,785**	**$4,785**
EXPENDITURES					
General Fund (savings)		**$68,877**	**$71,042**	**$73,346**	**$75,799**
Net Fiscal Impact - GF		**$73,662**	**$75,827**	**$78,131**	**$80,584**

POSITIONS: Abolish 3 clerical positions in the Department of Revenue beginning FY 99-00.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Alcoholic Beverage Commission

EFFECTIVE DATE: Sections 1 through 13, 27, and 28 (privilege licenses) become effective July 1, 1999 and remaining sections (ABC licenses and permits) become effective May 1, 1999.

BILL SUMMARY: The act repeals the state privilege license taxes for amusements, installment paper dealers, and alcoholic beverages. It increases the tax on tax on installment paper dealers from .275% to .277%. It changes the privilege tax on new banks and eliminates the proration of license fees for loan agencies and professionals. It creates a uniform malt beverage tax, raises the fee on ABC permits, and simplifies the filing and reporting requirements for alcoholic beverages.

ASSUMPTIONS AND METHODOLOGY:

Section 2

Part (c) of section 2 of the bill ends the practice of charging half the privilege license tax to an individual who applies after the midpoint of the fiscal year. Upon passage of this bill, only professionals and loan agencies remain subject to annual license fees. Except for accountants, the Department of Revenue does not have data on the number of licenses that were paid for half year. 675 accountants paid $25 for a half year license in FY 1996-97and 472 bought a half year license in FY 1995-96. Averaging the two years, this note assumes 575 accountants needing a partial year license will pay the full $50 in FY 1999-00. **This will generate a revenue gain to the General Fund of $14,375.**

Sections 4 & 5

In FY 1996-97, there were 323 privilege licenses issued to amusements, circuses, dances, and rodeos generating $17,737 in General Fund income. For this group the license fee serves as advance payment toward the 3% gross receipts tax collected on their performances. Except for the small amount of interest that the Department may earn on license revenue, **there is no fiscal impact from eliminating the annual license fee.**

Section 9

Section 9 eliminates the $100 license fee for installment paper dealers who engage in the business of "dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt". Unlike the amusements license, the $100 paid by installment paper dealers is not an advance payment for the tax they pay. Based on FY 1996-97 collections, this change will produce a loss of $123,800 annually beginning in FY 1999-00. These dealers also pay a tax of .275% of the face value of the financial instruments they handle. To offset the revenue loss, this tax rate is increased to .277% to raise $112,810. **The net revenue impact from eliminating the $100 fee and increasing the tax rate to .277% is a revenue loss of $10,990.**

Section 10

Banks pay an annual privilege tax equal to $30 for each million dollars of assets they hold. However, a new bank pays a $100 privilege tax until it has been in operation for a year. This $100 fee is eliminated in section 10 and replaced with a requirement for new banks to pay the regular tax prorated by the number of days it operated during the fiscal year.

According to Ray Grace of the North Carolina Banking Commission, the establishment of new banks is cyclical and influenced both by the economy and by actions of the mega-banks. There were no new banks in 1993 and 1994. There were 2 in 1995 and 3 in 1996. In 1997, there were 10 new banks plus the conversion of a thrift to a bank. Mr. Grace anticipates 6 new banks in 1998.

This note assumes three new banks are established each year and uses FY 1996-97 as a model. The chart below shows the date each bank was chartered by the Banking Commission in 1996 and the average assets for the three banks in the four quarters of 1996-97. Under this bill, instead of paying $100 in their first year, the banks would pay $30 for each million dollars in assets with an adjustment for the number of days in operation. For example, Bank A would pay $30 x 13.239 ($13,239,250/$1,000,000) x (344 days/365 days) = $374.13

	Established	Avg. Assets	Est. Tax	Current Tax	
Bank A	7/22/96	$13,239,250	$374.13	$100	
Bank B	11/18/96	$30,036,333	$555.06	$100	
Bank C	7/31/96	$28,317,750	$779.00	$100	
			$1,708.19	$300	Difference = $1,408.19

In summary, this note assumes additional revenue of $1,400 per year due to the change in section 10.

Sections 14 - 30

Under current law, a business that sells beer, wine, and/or spirituous liquor is required to secure the appropriate permits from the State Alcoholic Beverage Commission (ABC) and the appropriate commercial and retail licenses from the Department of Revenue. Sections 17 & 18 repeal the Department of Revenue's annual commercial and retail licensing requirements. New businesses filing permit applications with the ABC will no longer have to file a license application with the Department of Revenue. The Department collected an estimated $3.1 million from 40,000 licensees in FY 1996-97. This note assumes the revenue from ABC licenses in FY 1998-99 and beyond would have been $3.3 million per year. To offset this loss, ABC permit fees are increased in sections 29 and 30 of the bill. Using 1996-97 data on the number of ABC permits issued, the ABC worked with the Fiscal Research Division of the General Assembly to propose increased permit fees that would make the repeal of the retail licenses revenue neutral.

Since ABC permits are business specific (malt beverage, fortified wine, etc.), some businesses may be required to hold more than one permit. All ABC permits are continuing except for the brown bagging and the special occasions permits. This means as long as the permittee meets the qualifications of a permit, the permit does not have to be renewed annually. Under the proposed act, all businesses that currently hold licenses and permits prior to May 1, 1999 will not be affected by this act as long as they continue to meet the qualifications of their ABC permit. If an existing business fails to qualify, then they will have to reapply for new ABC permits and pay the higher fees.

By eliminating the processing of 40,000 ABC licenses each year, the Department of Revenue estimates that it could reduce its clerical staff by up to three Grade 57 clerical employees in the Business License & Returns Section of the Office Examination Division. The savings from these positions is $68,877 in FY 1999-00. This amount is adjusted for future growth in wages and fringe benefits.

Section 22

The excise tax rates on beer are combined into a single rate in section 22. Beer sold in barrels is currently taxed at 48.387 cents per gallon and beer sold in bottles and cans is currently taxed at 53.376 cents per gallon. The combined rate of 53.177 cents per gallon preserves the General Fund revenue expected to be collected from both rates. Although the proposal is revenue neutral, those selling beer in bottles and cans will pay a little less tax and those selling beer in barrels will pay a little more. For example, in 1996-97 producers of beer in bottles and cans would have paid $302,252 less in excise tax while producers of beer by the barrel would have paid $302,252 more in excise tax.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic & Warren Plonk
APPROVED BY: Tom Covington

DATE: June 16, 1998

EXPLANATION OF SENATE BILL 1252 (2d Ed):
Simplify Privilege License Tax

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 29, 1998
SPONSOR: Senator Hoyle

Senate Bill 1252 is a recommendation of the Revenue Laws Study Committee and makes numerous changes to simplify and/or reduce the State privilege license taxes on amusements, professionals, installment paper dealers, banks, and alcoholic beverages. The Bill also increases ABC permit fees. The changes to the taxes and fees on alcoholic beverages would become effective May 1, 1999. All other changes would become effective July 1, 1999. Explanations of the amendments incorporated in the Second Edition of the Bill, as passed by the Senate, are indicated in bold.

Amusements. The current law imposes an annual $50 State privilege license tax and a 3% gross receipts tax on any form of entertainment not otherwise taxed or specifically exempted under Article 2 of Chapter 105. The license tax is due July 1 of each year and the tax on gross receipts is due monthly. Taxable forms of entertainment include athletic contests, sporting events, concerts, plays, musicals, night clubs, comedy clubs, amusement parks, carnivals, and festivals. Antique shows, craft shows, and auto shows, when a band is provided or a celebrity signs autographs, are also subject to the tax. Other taxable amusements are fashion shows, beauty pageants, air shows, mud slings, and tractor pulls. Current law also imposes a $50 privilege license tax and gross receipts tax on amusements such as a circus, menagerie, wild west show, a dog and/or pony show, or any other similar amusement not taxed in Article 2. The privilege tax on these amusements is assessed for each day or part of a day that the circus or similar amusement is held. Exempt amusements set out in Article 2 are high school and elementary school athletic contests, teen centers, dances and amusements promoted and managed by a corporation that operates a center for the performing and visual arts when the dance or amusement is held at the center, and amusements on the Cherokee Indian reservation where the entity providing the amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council. **The Second Edition also exempts all elementary and secondary school dances and other amusements. Current law only exempts the first $1,000 of gross receipts derived from dances and amusements actually promoted and managed by secondary schools when the proceeds are used exclusively for the school and not to defray expenses.**

The State privilege license tax on amusements is treated as an advance payment of the corresponding gross receipts tax, and the license tax is applied as a

credit upon the gross receipts tax. Sections 4 and 5 of the Bill repeal the State privilege license taxes on amusements. This repeal would simplify the taxes assessed on amusements and would be revenue neutral since the license tax is a credit upon the gross receipts tax. Amusements will continue to pay a 3% gross receipts tax and any existing local license tax.

Section 6 reorganizes the exemptions for certain amusements, so that a list of all exempt amusements will appear in one place in the statutes. The list includes those amusements that are currently exempt in Article 2, amusements that are listed as exempt in other sections of the statutes (the North Carolina Symphony Society and amusements organized under the Agriculture Chapter), and outdoor historical dramas that are described in Chapter 143 and that have generally been exempt under the current definition for exemptions in G.S. 105-40.

Professionals. G.S. 105-41 imposes a statewide privilege license on persons practicing certain professions or engaging in certain businesses. Section 7 of the Bill makes various clarifying and technical changes to the statute and reorganizes existing exemptions found throughout the statutes so that all exemptions will appear in G.S. 105-41. Currently the statute exempts persons age 75 and over and certain persons practicing the professional art of healing. The Bill adds to this list blind persons engaging in a trade or profession as a sole proprietor. The exemption for blind persons is currently set out in another section of Chapter 105, which this bill repeals. Section 8 of the Bill moves from Chapter 105 to Chapter 93B, Occupational Licensing Boards, a provision that exempts any person serving in the armed forces or in the merchant marine from paying license fees to a licensing board or commission or to the State. This exemption belongs in the Occupational Licensing Chapter because it relates to occupational licensing, not to taxes. **The Second Edition of the Bill allows an individual who is serving in the armed forces of the U.S. an extension of time to pay any license fee charged by an occupational licensing board, if the individual qualifies for the extension of time to file a tax return under G.S. 105-249.2. This statute provides that the Secretary of Revenue may not assess interest or penalty against a taxpayer for any period that is disregarded under section 7508 of the IRC in determining the taxpayer's liability for a federal tax. This section of the IRC postpones tax liaibility for an individual serving in the armed forces, or serving in support of the armed forces, in an area designated by the President as a "combat zone". The period of service in such area, plus the period of continuous qualified hospitalization attributable to injury received while serving in the area, and the next 180 days thereafter, are disregarded in determining tax liability.**

Installment Paper Dealers. Installment paper dealers are persons engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt, when at the time or in connection with the execution of these instruments, a lien is reserved or taken on personal property located in the

State to secure the payment of the obligations. These dealers pay an annual $100 license tax and a quarterly tax of .275% of the total face value of the obligations within the preceding quarterly calendar months. Section 9 repeals the $100 license tax. Dealers will continue to pay the quarterly tax. **The Second Edition of the Bill increases the quarterly tax of .275% to .277% to offset the loss of revenue from repealing the annual $100 license tax. According to the Department of Revenue, this increase in rate would cover $112,811 of the $123,800 loss**

Banks. Under current law, banks are issued a privilege license each year and pay a tax at the rate of $30 for each $1,000,000 or fractional part of total assets held. These assets are determined by averaging the total assets shown in the four quarterly call reports of condition (consolidation domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities. Section 10 eliminates the license and requires the banks to submit instead an annual report to the Department of Revenue showing the average of their total assets. The privilege tax must be paid with the report by July 1. The submission of a report in lieu of issuing an annual license will relieve the Department of having to issue licenses that vary yearly for each bank. The Department's current computer system has had difficulty issuing licenses that vary each year, and this problem will become even more difficult with the year 2000 changeover. Also, a report will assist the Department in auditing banks. The Bill also repeals the $100 annual privilege tax for banks that have been in operation for less than a year. New banks will be required instead to pay a tax on the average of the total assets determined by the number of days in operation.

Alcoholic Beverages. Senate Bill 1252 repeals annual privilege licenses on ABC permittees, raises the ABC permit fees by the corresponding amount, and simplifies the tax rate on malt beverages. In order to engage in a business involving alcoholic beverages, a person must obtain both a permit issued by the ABC Commission and a corresponding annual State license issued by the Department of Revenue. The person must obtain the ABC permit before applying for the license. Upon payment of the State license tax, issuance of the license is mandatory if the applicant has the corresponding ABC permit. The information and qualifications required for the annual State license are the same as the information and qualifications required for the corresponding one-time ABC permit. The additional State license serves no purpose other than to raise revenue. The Bill repeals these privilege licenses in order to eliminate the duplicate requirement of applying for a State privilege license and a corresponding ABC permit. The approximately $3.1 million revenue loss from the repeal of these privilege licenses would be offset by an increase in the ABC permit fees set out in G.S. 18B-902(d), by repeal of the reduced fees for combined permits in G.S. 18B-902(e), and by an increase in the annual renewal fees for mixed beverage and guest room cabinet permits in G.S. 18B-903(b).

Senate Bill 1252 also simplifies the filing requirements for malt beverage taxpayers by setting a single rate of excise tax on malt beverages. Currently, an excise tax of 48.387 cents per gallon is assessed against malt beverages in barrels holding at least 7¾ gallons and an excise tax of 53.376 cents per gallon is assessed against malt beverages in cans, bottles, barrels, or other containers holding less than 7¾ gallons. The Bill imposes an excise tax of 53.177 cents per gallon on the sale of any malt beverage, regardless of the container. Thus, the Bill simplifies the filing and reporting requirements for malt beverages, unfortified wine, and fortified wine by eliminating the requirement that vendors of these products specify the size and type of containers sold in their monthly reports to the Secretary. This information will now be shown on the invoice.

Other changes. Sections 1, 2, 3, and 5 of the Bill make conforming changes throughout Article 2 to clarify that the Article now deals more with privilege taxes, such as a tax on a business' gross receipts, rather than with license taxes. The only State license taxes that will remain in Article 2 if this Bill is enacted are attorneys-at-law and other professionals ($50.00) (G.S. 105-41) and loan agencies or brokers ($750.00) (G.S. 105-88). These sections of the Bill also eliminate the half-rate license tax for professionals and loan agencies that begin business more than halfway through the year.

For Cal.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1252 A BILL TO BE ENTITLED AN ACT TO SIMPLFY AND MODIFY PRIVILEGE LICENSE AND EXCISE TAXES AND RELATED PERMIT FEES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

Name of Committee: House Finance

Date: June 30, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Gary Harris	NC Petroleum Mkts. Assoc.
R. Paul Meyer	NCMBA
F. Carlyle Sloop	NC Horse Council
Benny Scarboro	NC Horse Council
Margie Rhodes	" " "
Dick Mandmann	" " "
Tom Grubb	Citizen
Jay Hare	DOR
Billy Daniel	DOR
Angela Altice	DOR
Donna Alderman	DOR
Ruth Sappie	DOT

VISITOR REGISTRATION SHEET

House Finance — June 30 98

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Danny Rogers	NCDOT
Bill Crumbly	NC Dept of Revenue
Greg Radford	NC DOR
Patti Gambill	DOR
Andy Fox	WCSR
Cam Cowes	BPMHL
Bernadette	SOS
[illegible]	NCPC
Doug Howell	NCDMA
Paul Fain	OSBM
Amy Jo Bain	Smith Anderson
[illegible]	CP&L

VISITOR REGISTRATION SHEET

Name of Committee: House Finance

Date: June 30 98

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	NC Bar Assoc.
Paul Stock	NC Bankers Assn.
John [illegible]	NCAFI
David Simmons	ZDA, PA
Andy Ellen	NCRMA
Ann Case	NCRMA
Sherol Braman	NC Petroleum Council
[illegible]	NCCMA
Alice Garland	Electricities
Dan Petty	NCDACS
Kelli Kulma	DuPont
Frank Tortora	Chevron Energy

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

June 30, 98
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Baldwin	State Auditors offices
Tim Minton	NC HBA
Brenda Dougherty	Sprint
Jim Blackburn	NC Association of County Commissioners
Carol Fulcher	ABC Comm.
Tommy Chapman	VP Racing Fuels, Inc.
DAVID TAYLOR	VP Racing Fuel, Inc. BTO

MINUTES

PUBLIC HEARING

HOUSE COMMITTEE ON FINANCE

JUNE 25, 1998

3:00 P.M. ROOM 544-LOB

Rep. Brawley called the Public Hearing to order and welcomed everyone. A silent roll was taken (roll list denotes members present). Visiting Representatives & Senators were: Reps. H. Hunter, M. Jeffus, & F. Mitchell; Sens. B. Shaw, and J. Blust.

SB-1569 ECONOMIC OPPORTUNITY ACT OF 1998 was the purpose of the Public Hearing which had been requested by a member of the House Finance Committee (Rep. C. Berry) following the joint meeting with the House and Senate Finance and Appropriations Committees on Tuesday, June 16, 1998.

Chairman Brawley called upon those individuals which had asked to be recognized to address the members. Listed below are the speakers. (It also denotes if a copy of their comments are attached).

Mr. Bill Early, Economic Development, Hertford County, copy attached.
Dr. Mark Miller, Private citizen, Guilford County, copy attached.
Mr. Dan Gerlach, NC Budget & Tax Center, copy attached.
Mr. Randy Harrell, Pasquotank County, Economic Development, copy attached.
Mr. Mike Slane, Greensboro resident, copy attached.
Ms. Andrea Walls, Greensboro resident, copy attached.
Mr. Jim Hogan, Greensboro resident, copy attached.
Ms. Christine Peeler, Greensboro resident, copy attached.
Mr. Ben Berry, Northeast Partnership, no copy.
Mr. George Draper, Mayor of Weldon, copy attached.
Mr. Quinton Qualls, Hertford County, copy attached.
Ms. Leslie Bevacqua, NCCBI, copy attached.
Mr. John Carr, Raleigh attorney representing contractors, no copy.

The meeting adjourned at 4:15 p.m.

C. Robert Brawley
Rep. Brawley, Chairman

Cindy Brooks
Cindy Brooks, Clerk

PUBLIC HEARING

SB-1569 ECONOMIC OPPORTUNITY ACT OF 1998

SPEAKERS:

BILL EARLY - HERTFORD COUNTY

DR. MARK MILLER - GREENSBORO RESIDENT

DAN GERLOCK - NC BUDGET & TAX CENTER

RANDY HARRELL (PAUL LAWLER ASKED FOR HIM TO SPEAK)

MIKE SLANE - GREENSBORO RESIDENT

ANDREA WALLS - GREENSBORO RESIDENT

JIM HOGAN - GREENSBORO RESIDENT

CHRIS PEELER - GREENSBORO RESIDENT

DEBORAH PERKINSON - GREENSBORO RESIDENT – deferred her time to Ms. Peeler

CHARLES SHAW WILL INTRODUCE **BEN BERRY** - NORTHEAST PARTNERSHIP

JOHN HOOD - JOHN LOCKE FOUNDATION

MS. ODELL HOLIDAY - HALIFAX COUNTY – No show

JOHNNY DRAPER - MAYOR OF WELDON, HALIFAX COUNTY

QUINTON QUALLS - CHAIRMAN OF CO. COMMISSIONER, HALIFAX CO. – No show

LESLIE BEVACQUA - NCCBI

John Carr - Raleigh

HERTFORD COUNTY
ECONOMIC DEVELOPMENT COMMISSION

Post Office Box 429 Winton, North Carolina 27986 Phone (919)358-7801 Fax (919)358-7806

Good afternoon members of the House Finance Committee and other distinguished guests. I am Bill Early, Economic Development Director for Hertford County. I am here on behalf of the citizens of Hertford County and northeastern North Carolina. My purpose in being here today is to ask you to support HB 1688/SB 1569, Economic Opportunity Act.

I have served Hertford County for nearly 10 years as Director of Economic Development. I have lived in Hertford County most of my life. I have heard the plea from my fellow residents about our need for job opportunities for our children. I have seen widows struggle to pay their property taxes because we have one of the highest tax rates in the State. I have seen teenagers go astray because there was no hope for their future. I have seen millions of dollars spent attempting to train individuals for jobs that do not exist. I can stand before you telling you about the economic plight and statistics of Hertford County and northeastern North Carolina, but you are very much aware of our need.

I have heard Hertford County and northeastern North Carolina residents say hopefully, "If we could get an IBM or BMW, things would change." The reality is that we do not have the infrastructure in northeastern North Carolina to attract this type of high tech firm. Nucor has agreed to come to Hertford County if North Carolina is willing to make an investment in the future of northeastern North Carolina through this tax credit package. It is my opinion that Nucor offers more to North Carolina than our people have hoped for. Nucor is willing to train motivated individuals who truly seek a better standard of living. In addition, Nucor will pay some of the highest if not the highest manufacturing wages in the State.

Hertford County has an existing real estate tax base of $600,000,000. Nucor is willing to invest an amount equal to one-half of Hertford County's present real estate value into the county with a commitment from North Carolina. While Nucor is seeking tax credits, the impact goes far beyond the mill itself. We anticipate as many as 25 additional facilities locating in the region as a result of Nucor. We anticipate as many as 1,000 jobs as a result of Nucor's location.

I have heard comments that this package is worth $517,000 per job. I disagree with this claim because there will be many more than 300 jobs created as a result of this facility. Furthermore, these incentives are spread over a 20 to 25 year time period. This represents an annual incentive of approximately $7 million. I am sure the State spends more than $7 million per year in northeastern North Carolina in the Judicial system, social reform programs and training for jobs that do not exist. Why not offer a tax credit to someone who will offer jobs to residents so that they can stay out of court and become responsible, productive citizens that all of North Carolina can be proud of.

I have heard concerns that people living in Virginia will cross over the line to work at Nucor, thus taking jobs intended for North Carolina residents. Let me assure you this is not likely to happen. It has been indicated that these are North Carolina jobs that will be filled by people who live in North Carolina.

I know that this is a large request. This is not a giveaway. It is an investment in northeastern North Carolina. If you want a piece of the pie, a small piece is better than no pie at all. It is reported that North Carolina will receive nearly $13 for each $1 invested in Nucor. When you agree to credits of $155 million, you are agreeing to accept a $2 billion return on your investment.

An editorial in the "Charlotte Observer" on June 8, 1998 stated that "Hertford County would not attract a major employer without substantial State investment" it concluded that the incentive package will "require legislative approval and deserves it."

I ask that you respond favorably to this package and northeastern North Carolina with your affirmative vote.

Thank you.

William S. Early, Executive Director
Hertford County Economic Development Commission

Summary of Remarks Made by Professor Mark S. Miller

Although the name Federal Express does not appear anywhere in the bill you will be considering, passage of this bill will provide millions of dollars of tax incentives to allow FedEx to build an unwanted cargo hub at the Piedmont Triad International Airport. I say unwanted because the citizens who are supposed to benefit from this so-called economic development package don't want and don't need this cargo hub. For the past 25 years, the Guilford County Board of Commissioners has consistently zoned the surrounding area of the airport for residential housing. This was done to build up the real estate tax base and attract light industry and business to the area. In fact, if it hadn't been for this steady economic growth in our area, we probably wouldn't even be here discussing this bill. Up until this residential expansion, Greensboro lacked the financial tax base, the people, the demographics, and the school system that would attract a company like FedEx to our city. Creation of this cargo hub, with its proposed night-time and early morning flights for the sake of 1500 mostly part-time jobs at a cost to tax payers of $95000 per job, will result in the destruction of approximately 3000 to 4000 homes numbering 12000 to 16000 people. We will have this growth anyway. Our highway system and central location makes the Western Piedmont area a highly desirable location that will continue to attract industry, whether FedEx comes or not. To sacrifice the community structure and way of life of what will end up being close to 20% of the population in both North and Southwest Guilford county to line the pockets of a few wealthy businessmen and women on the Chamber of Commerce and County Board of Commissioners makes absolutely no economic, moral, or humanitarian sense. Because that is what this economic growth is about - making the wealthiest members of our community a little more wealthy at the expense of everyone else. If you pass this bill as is, you will essentially be allowing FedEx and the Airport Authority to arbitrarily destroy $560 million dollars worth of homes over the protests of the people most affected by this decision.

The citizens of Guilford County don't understand how, in a supposedly participatory democracy, these decisions have been made without our permission or consultation. There has been no community input, as FedEx and the Airport Authority have consistently refused to discuss this issue with residents. Their attitude has been that this is a "Done Deal" and you will vote how they wish. If you pass this bill as is, you are sending a clear message to every voter in this state that we are basically "for sale" to the highest bidder. Is that the kind of enlightened government you envision for us and our families? Why were we allowed to vote on the baseball tax referendum and not the airport expansion? Probably because, as some of you may remember, we already voted on this issue several years ago when a Global TransPark cargo hub was first proposed for the Greensboro airport. With a smaller community and much less homes involved, you heard our protests and created, at considerable taxpayers expense, a cargo hub center in Kinston. FedEx's claims that this is not good enough for them are, quite frankly, too bad. They can huff and puff all they want about going elsewhere, but the truth of the matter is that they want to be in North Carolina - this is the only place that makes sense for them both geographically and economically, and they won't get a better deal than the one you're offering.

I and others have sent many of you letters and E-mails detailing the negative consequences of this bill, our concerns about safety, and the severe impact on pollution in our area, all factors that have not been taken into account by the phoney and hyped economic reports FedEx and our Chamber of Commerce are producing. Ladies and gentlemen, the truth of the matter is that the airport is too close, and the cities of Geensboro and High Point are too small, to safely accommodate this type of air and ground traffic. We can have economic development in our area without this type of noisy and dangerous industry in our backyards. The bullying behavior of the Airport Authority and FedEx has not made us feel any easier about their promises to you to minimize impact on our communities, and if you give them this green light by passing a bill with tax incentives, they will be emboldened to plunge ahead and roll right over us. I, and many of my fellow citizens, are here to ask you to properly represent us and prevent the destruction of our communities against our expressed wishes. If you feel you cannot vote against this bill because of the need to fund other programs, then use your collective wisdom to amend it in such a way that will make funding contingent on FedEx going to Global TransPark, where they belong, and not the PTI airport. Kinston needs the economic growth, the representatives from Kinston will tell you they want FedEx there, and the majority of citizens in our area don't want them in our backyards. There is a reason why every community that has been given the opportunity to vote on this issue has turned down the placement of a FedEx cargo hub in their area - that should be more than sufficient warning to make you realize this is an inappropriate industry for our community.

SUPPLEMENTARY MATERIAL

Since the announcement on Monday, April 13th at the PTI airport there has been much misinformation spread regarding the FedEx deal, the proposed expansion of the airport, and how political decisions are made in both Guilford County and in Raleigh. At the moment, there is no finalized contract between FedEx and PTI. We assume that FedEx is waiting to see if Governor Hunt and the General Assembly will deliver up the necessary funds and financial incentives, despite the fact that FedEx is a profitable $11.5 billion corporation and that the General Assembly has already spent (wasted?) millions of dollars of taxpayer money on Kinston to attract air cargo industries. If Governor Hunt is so sure that FedEx is right for Greensboro, why did he not designate FedEx appropriations as a stand alone bill that could be honestly debated in an open forum in Raleigh instead of attaching it to much needed appropriations bills for the rest of the state?

Looking at the so-called economic benefits to our area, we do not understand how the Greensboro Chamber of Commerce comes up with their numbers. Using the very same numbers (1500 mostly part-time jobs versus $275 million in tax incentives), a conservative figure of $95,000 of taxpayer money spent per part-time job created appears. Of course, that is the best case scenario. In the past, and of course the Greensboro Chamber of Commerce knows this, FedEx has failed to deliver up the promised jobs. For example, in Dallas-Forth Worth, FedEx announced in 1993 that it would create 600 full-time jobs. They have yet to deliver. All of this is very interesting since Greensboro and the surrounding communities have full employment and this may impact negatively on existing businesses that need to hire, too.

The Greensboro Chamber of Commerce also tells us that it is not the jobs created by FedEx *per se*, but all the ancillary businesses that move to an area because of FedEx that creates this economic bonanza. Although some firms will relocate to be near FedEx, many will come anyway because of the vast network of interstates that meet in Guilford County. Trucking is still cheaper than air cargo delivery. Imagine, we could have increased business activity without the added noise, increased pollution, and congestion that an air cargo hub brings. Why won't the Greensboro Chamber of Commerce run those numbers for us? Then perhaps all of us in Guilford County could make better informed decisions regarding the future direction of Guilford County and not leave it to the business elite who only understand *the dollar*.

The construction of a cargo warehouse and third runway in the current proposed plans would assure the deterioration of a 5 million dollar real estate tax base in the Northwest section of Greensboro and the destruction of the quality of life and property values of 3,000 to 4,000 homes consisting of 12,000 to 16,000 people. If houses within the first mile and a half of the proposed third runway are green zoned (assuming 2,800 houses are condemned because of their nearness to the airport), Guilford County loses a minimum of houses worth $560 million and the tax base and local businesses that support these communities. If the citizens of Guilford County do their math, they would find that these numbers are not as rosy for the residents of Guilford County as the Greensboro Chamber of Commerce likes to pretend. Their glowing projections regarding the economic benefits of the Greensboro Coliseum never panned out either.

To accommodate FedEx, the airport says it needs to build a third runway. This is rather incredulous considering that this airport only operates at 35% capacity. Perhaps the airport authority is using FedEx to create the opportunity to have built, at taxpayer's expense, a 3rd runway. The airport's position is that this proposed runway has been on the books since 1968, and all those that have moved into the area since (now numbering 20 subdivisions) ought to have known this. However, the runway originally on the books in 1968 was for a small runway to handle private pleasure planes, not a 10,000 foot long monstrosity aimed directly over a heavily populated ring of residential subdivisions. What the airport also failed to tell FedEx, and perhaps the rest of Guilford County, is that since 1968 the Guilford County Board of Commissioners has repeatedly zoned for residential communities and against airport expansion. The proposed runway that the airport wants to build will now be about 1500 feet from the nearest legally zoned homes. The current Guilford Board of County Commissioners has repeatedly refused to honor its predecessors commitment to the communities of Northwest Guilford County. The rest of Guilford County should understand that if this Board does not honor its moral responsibility to the decisions made by previous boards, whose properties are safe in Guilford County?

Perhaps the Airport Authority and business elite already understand that to accommodate the third runway the FAA will condemn most of the residential communities within Northwest Guilford County. At RDU Airport, an airport within our same state, a 3 mile nonresidential area at the end of its runways is required. RDU airport has compiled 55 decibel noise cones (as recommended by EPA and HUD) for future use, while the Greensboro airport has been allowed to operate without noise monitors. At this point, all of the noise maps shown by the PTI airport are theoretical projections, and it is amazing that when one looks at the two parallel runways, the one currently being used has a 2 mile noise cone extension while the new proposed runway's noise cone mysteriously stops just short of the residential area a scant 1500 feet away. If the same safeguards are established that currently are in force at RDU, there is a strong likelihood that a number of subdivisions will have to be razed. If the same safeguards are not mandated in the Greensboro area, then communities are being placed at risk. Why hasn't PTI addressed this issue? Perhaps it is because PTI understands that to raze people's homes would be very unpopular within Guilford County and many within the County would question the right of a governmental agency to do so.

PTI claims that noise is not an issue. At present, noise is not an issue. PTI, as said before, operates at 35% capacity. There are few flights (probably 5-6) going over residential communities at night. Does Mr. Johnson really think that if FedEx operates from 11 P.M. - 5 A.M., he is not going to get noise complaints? Common sense should tell him that, as you increase flights during the wee hours of the morning, noise complaints will increase accordingly. The idea that 95% of the flights will take off and land from the Southwestern end of the airport is ludicrous. Nature is not going to cooperate with Mr. Smith and Mr. Johnson because of their say-so, and it is very likely that weather conditions will force them to use the northeastern, residential side of the airport 20-30% of the time. More importantly, even if they could control the weather, when those planes get ready to take-off, they will have to start from the residential end of the runway, and they will be revving those engines to full take-off speed a scant 1500 feet from the nearest homes. If folks along Battleground and the subdivisions around Oak Hollow Mall think they will not hear aircraft at all hours of the morning,

they are in for a rude awakening. In all likelihood, 20-25% of the citizens of *all* of Guilford County will be affected by the noise and truck traffic.

Aside from the noise issue, there are legitimate concerns regarding the increase in truck traffic and the subsequent environmental and safety issues. Isn't air pollution a concern? Don't we already have too many *orange* alerts indicating that the air quality is below acceptable standards? Is there no concern that a giant complex (larger than PTI's passenger terminal) will be built so close to residential communities that it will bathe the area in artificial light, in effect turning night into day? Why hasn't anyone expressed any concern over the fact that the majority of accidents and crashes involving aircraft (and FedEx has had 7 this past year alone) occur within 2-3 miles of the runway, during either take-off or landing, which would in this case be in the residential areas currently in line with the proposed runway? None of theses issues have been adequately addressed by either FedEx or the Airport Authority, who have refused to meet with the community-at-large. Why did they refuse to attend Representative Wood's open forum? All of this points to the conclusion that FedEx does not belong near residential communities. The PTI airport is too close and Greensboro is too small a city to accommodate this type of cargo traffic, both in the air and on the ground.

It is interesting that FedEx insisted upon secret negotiations and the Airport Authority acquiesced. Why? Why, in a participatory democracy, were the citizens that would be most affected not allowed any input? What does FedEx have to hide? What does the Airport Authority have to hide? Why were our fellow citizens in Raleigh-Durham kept apprised and allowed to voice their opinion prior to a final decision? Why was Greensboro not allowed the same consideration? Why do our elected officials here in Guilford County and in Raleigh always think they know what's best for us? If they are so sure of the rightness of their position, why won't they allow open debate and full disclosure prior to giving away our tax dollars?

The citizens of Guilford County need to be given the opportunity to ask the hard questions, get the facts, and not rely on misinformation being fed by FedEx, the PTI Airport Authority, the Greensboro Chamber of Commerce, or the governor. Anytime a community was given all the facts regarding FedEx, the community at-large, not just the neighboring residents, have asked FedEx not to come. Find out why. You will then probably come to the same conclusion that many of us have; Kinston is the place for FedEx, not Greensboro.

Professor Mark S. Miller
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msmiller@wfubmc.edu (Bus.)

TESTIMONY OF DAN GERLACH
SENIOR FISCAL POLICY ANALYST
NORTH CAROLINA BUDGET AND TAX CENTER
JUNE 26, 1998

Good afternoon. My name is Dan Gerlach and I am the Senior Fiscal Policy Analyst for the North Carolina Budget and Tax Center, which provides timely, credible and accessible analysis of state budget and tax policy issues. We have released several analyses of business tax burden and the William S. Lee Act tax incentives, so our interest in this topic is longstanding. We do not believe that the Economic Opportunity Act will necessarily result in giving the store away. Yet it does have some troublesome provisions that need addressing and does need substantial, independent evaluation to ensure the taxpayers are getting their money's worth and we have protection from legal action.

The General Assembly's consideration of incentives must involve four questions:

- Would the company have located here without an incentive package?
- Do the incentives set bad precedents for tax policy?
- What are the opportunity costs for enacting these incentives?
- How will we make sure that the incentives are accomplishing their goals?

The Budget and Tax Center has expressed grave concerns about incentives in the past, especially the Lee Act, since North Carolina's business tax burden is relatively low and since the Lee Act served to expand benefits to those areas already rewarded by a free market. In our judgement, incentives are appropriate to remedy market failure. It is perfectly reasonable to enact strategies to encourage economic growth in areas missing out on the economic boom, such as the northeastern part of the State, and it is reasonable

to encourage the creation of high-quality jobs in a State that lacks them for many of our citizens.

But the Federal Express and Nucor incentives both rank among the top ten most expensive incentive packages offered by any state in the last decade. Has the State gone too far in accelerating the incentives race?

Federal Express

The average pay for a full-time job at the Federal Express hub is $34,000, or $654 a week. This is 23 percent above the average weekly wage for Guilford County and 19 percent above the average weekly wage for Forsyth County. Also, part-time work with full benefits (as offered by Federal Express) is quite rare. Only 15 percent of firms offered such benefits to part-time, blue-collar employees in 1995. The new tax credits and exemptions cost $2.4 million annually in 1999-2000, grow to $5.3 million by 2002-03 and then decline to $2.5 million annually by 2019-2020.

The General Assembly must decide if the location of the airport near many major interstate highways and close to major population centers would have outweighed incentives offered by other locations to Federal Express. Policymakers must also decide if any of the tax changes risks embarking on a "slippery slope" with our basic tax structure. We are concerned with the proposed extension of an investment tax credit for operating leases. North Carolina already provides a tax credit for capital leases, which makes sense. A capital lease requires the company that uses the equipment to count the equipment as a liability on its books, allows the company that uses the equipment to buy it at the end of the lease, or has payments or a time period for the lease for a substantial

amount of its cost or period of probable usefulness. An operating lease does not have these characteristics. What guarantee does the State have that this investment will remain in North Carolina, if it remains the property of the company with which Federal Express contracts?

Federal Express would create 750 new jobs by 2002. 750 jobs is equal to 0.3 percent of Guilford County's 1997 labor force. The multiplier effect may result in an additional 1704 jobs, or 0.8 percent of the 1997 labor force. The total incentive package annually, if instead dedicated entirely to public school education, would increase spending by $106 per public school pupil in Guilford County, or 2.1 percent above current state and local spending.

Nucor

The average pay of Nucor employees is estimated at $60,000 annually, or $1153.85 a week. This wage rate is three times the average weekly wage in Hertford County today. Nucor will create 350 new jobs and the multiplier effect will result in the creation of 595 other jobs. Together, these jobs represent 9.6 percent of the 1997 Hertford County labor force and 3.0 percent of the 1997 labor force for Bertie, Gates, Northampton and Hertford counties combined. The new tax credits and grants to Nucor will total $3.0 million this year and will increase to $15.0 million annually by 2003-04. $3.0 million in grants and credits is almost ten percent above the amount of local tax levy Hertford County provided its schools in 1995-96 ($2.7 million). If provided to schools in the four counties listed above, it would increase public school spending by $372 per pupil, ranging from a 7.2 percent increase in Gates to an 8.7 percent increase in Hertford.

It is my estimation that Nucor could have found many similar places to locate a plant, since the northeastern counties aren't blessed with many population centers or transportation hubs. Yet the incentives for this company are enormous. The largest part of the package, the reinvestment credit, not only eliminates the entire income and franchise tax liability for the company, but also provides a cash payment from the State to the company for development of rail, roads, water system infrastructure or other industrial sites. The General Assembly must gauge whether this development will help attract successor or additional enterprises, since the taxpayers are largely financing the costs. Does this credit give Nucor the incentive to build a plant, invest in these types of development at public expense and then sell the plant and associated development at a profit?

What to Do Next

In 1996, when the General Assembly enacted the William S. Lee Quality Jobs and Business Expansion Act, there was a tacit understanding that the State would go this far, but not farther, and that a close, independent examination of incentives would follow in 2002. The Economic Opportunity Act of 1998 may violate that understanding, although the Commerce Department could justify these deals as unique and unforseen opportunities.

The General Assembly must now follow President Reagan's advice "to trust and verify." You have been virtually handed a *fait d'accompli* with this package, so I believe it will be enacted. But you must demand the following:

1. *Evaluate the Lee Act as is required by law.* The summary release of the agreement with Federal Express noted that "both parties would work to extend or eliminate the sunset on the William S. Lee Act." The jury is still out on the Lee Act. It only accounts for 3 percent of the total incentive package for Federal Express. An article in NCCBI's magazine noted that many of the Lee Act credits had been provided for businesses locating in our booming urban areas where businesses have already been sited. The evaluation must still occur and should be independent.
2. *Demand more comprehensive cost-benefit analyses.* The costs of a project are not limited to foregone tax revenues. Both projects will place additional demands on local public services and both have the potential for negative externalities -- Nucor for environmental concerns and Fed Ex for airport noise for local homeowners. Further, the benefits must be carefully analyzed. Nucor should provide data on its employees, so policymakers can see how incentives have helped our northeast county citizens, as opposed to Virginians or Nucor employees transferring from other plants. Companies locating to the region should be asked if Federal Express and Nucor played a role in their decision to locate in these areas.
3. *Mandate frequent tax expenditure reporting.* The last tax expenditure report issued by the Department of Revenue was in 1992. An analysis conducted at my request by the Corporation for Enterprise Development in Chapel Hill estimated that tax expenditures geared at promotion of economic development totaled $415 million in 1996-97. Given that size, the General Assembly should be reviewing such tax

incentives for success or failure much as it reviews items in the budget. Both deserve the same level of scrutiny.

4. *Check our legal ground.* A growing trend in the legal research on incentives concludes that these types of tax credits may violate the interstate commerce clause of the U.S. Constitution, much as the U.S. Supreme Court found that our intangibles tax was in violation. In the past, competitors of those companies which receive incentives may have been reluctant to bring legal action, since the State would merely take away the credits from the competitors, but not provide them to every business. But if these credits could be considered to be part of a contract between these companies and the State, much like the exemption of government retiree pensions from the individual income tax, then the State could end up having to extend the credit to all other companies as well. Make sure our legal ground is solid.

5. *Fully understand the opportunity costs.* Your colleagues on the Appropriations Committee are busily explaining the lack of available money to various constituency groups and advocates. The first-year state and local incentive costs for Fed Ex and Nucor total $5.4 million. This $5.4 million could be used to provide child care subsidies for over 3600 children, provide Medicaid services to almost 2000 elderly North Carolinians, or reduce the developmentally disabled waiting list over 1250 people. Do the opportunities presented by Nucor and Fed Ex outweigh these needs?

Thank you for your time.

Statement to the House Finance Committee Public Hearing on HB 1688 /SB 1569 Economic Opportunities Act

By
Randy Harrell
President
North Carolina Economic Developers Association
1997-1998

Mr. Chairman, members of the committee, good afternoon.

My name is Randy Harrell and I am the Executive Director of the Elizabeth City-Pasquotank County Economic Development Commission. It is indeed a privilege and pleasure to have the opportunity to appear before you today and I thank

investments. By providing incentives, the State of North Carolina will generate a profitable return. That return will be in the creation of new jobs and retaining jobs for the citizens of North Carolina. Economic Development takes place in a highly competitive arena. Competition has become fierce. Many states offer incentives to a corporation or a business in an effort to increase the chances that the corporation or business will locate in the state. North Carolina must do the same.

Thank you.

the House Finance Committee for calling this public hearing.

I am one of many developers who represent counties and cities across North Carolina, but today, I am here not only as a concerned citizen and a developer, but as a representative for many of my colleagues across this Great State.

I have the distinct privilege of serving as President of the NCEDA. NCEDA is the statewide organization of professional economic developers in North Carolina. Our members work daily to recruit

North Carolina Economic Developers Association

new business to the state and assist and encourage the expansion of existing industry.

We applaud Representative Lyons Gray, Senator David Hoyle, and the Department of Commerce for producing this legislation. It is an important statement that North Carolina wishes to compete for major economic development projects. For too long North Carolina has declined to compete for these businesses and watched the major projects with their jobs and investments go to other states.

Of the two projects in this bill, the one closest to my home is the Hertford County Recycling steel mill. This

project will bring several hundred jobs, at average salaries of $60,000, to an area desperately in need of investment and employment opportunities. This would not have happened without the incentive package in this legislation. Nucor has the kind of enviable reputation that allows it to ask for strong incentives.

In addition to the direct benefits of the project, the Nucor facility will bring a host of additional benefits. People directly involved with the project predict the facility will bring additional major investments related to Nucor's operation. Small businesses will expand as Nucor's wages spread

throughout the local economy. And the region will benefit by the proof of what we in the Northeast have said all along; the region is good for business. In addition, the Nucor facility will have no negative environmental impact.

The other project, FedEx's proposed facility in Greensboro, is another catalyst project. By building up the distribution facilities of the State, an important groundwork is being laid. This has been demonstrated in the famous Alliance Airport in Texas. Commerce will now have a strengthened hand to recruit companies dependent (on just in time inventory).

We have always been the good roads state and that form of infrastructure is truly an asset. But as more transportation options develop, North Carolina must stay in the forefront. A regional airfreight hub facility keeps us ahead of the pack.

In conclusion, these two projects are important investments in North Carolina. The fact of their incentive packages should not be reviewed as a "free hand" to offer any incentive for any project. Incentives should be limited by the benefits of the project and the necessity of incentives in each instance. Incentives are not "giveaways" but

Mike Slane
Comments

In Greensboro then

Ladies and Gentlemen please put your wallets and purses on the table so I can take your money from them to start my own business in N.C.. I would rather use your money than my own.
Funny - NO! Serious? YES

There is a feeding frenzy going on in our state with multi billion dollar Corporations feeding on our taxpayer money. It is a severe Political problem as well.

Bill Lee had a good idea. However the Business developer/recruiters from the Chamber of Commerce and other like organizations and lobbyists tread your offices daily have distorted the good intentions to the point that state incentive money and tax credits under the guise promised future benefit even contribute to the cancers of our state treasure that our tax revenue base may be in danger and our Bond rating could fall to a costly level.

See Act basic principles
WILLIAMS LEE ACT

Philosophy Underlying Credits

OBJECTIVES ARE GOOD

- Recruit new companies into NC, or encourage existing companies to add jobs or productive capacity, upgrade worker training, invest in product-related research
- Add capacity, improve competitiveness
- Focus on job quality -- wage requirement NO ADEQUATE CONTROLS
- Target larger incentives to more distressed parts of the state for job creation, investment or worker training IS TRIAD A DISTRESSED AREA? UNEMPLOYMENT AT LESS THAN 3%! YET THE STATE WANTS TO GIVE 11$ MILLION # IN INCENTIVES TO FEDERAL EXPRESS!

A FEW MILLION HERE, A FEW MILLION THERE, AND PRETTY SOON YOU'RE TALKING ABOUT BIG MONEY!

There is good development and bad development.
This out-of-control feeding frenzy has now gotten so hyped that millions of taxpayer dollars are even demanded for Federal Express and the Triad Airport Authority to support an unnecessary parallel runway with absolutely no consideration for the safety of the lives of human beings 2800 homes - 16 000 people within 4 miles and some only 1500 feet from the proposed runway
And all this for an airport now operating at 35% of capacity
Ludicrous as well as unfunded
Residents have proposed an alternative extension of an existing runway that will not impact on residential areas and cost a mere fraction of the existing plan, saving millions of State, Federal and County increasingly scarce moneys and millions of related infrastructure costs.
The Fed Ex (CARGO CARRIER) inclusion in this bill is a shoddy political maneuver to mix undesirable, unsafe development with possibly good development to gain passage for Fed-Ex's benefit. This should be deleted and treated separately because of the human safety and alternative plan factors and its lesser costs.

You have the opportunity Now to say NO. NO to this extension of Corporate Welfare and protect our taxpayers funds for Education, Health and general well being of people - human beings!

Anchea Walls

The Bill to amend the William S. Lee Act as it stands presently, will set a precedent North Carolina cannot afford.

Giving and increasing incentive packages to multi billion dollar companies to locate in areas like the Triad does not make business sense.

We are for progress and we are for companies like FedEx but not at this extreme expense to the taxpayers, our infrastructure as well as existing and future businesses.

These incentive packages being offered are so generous the expense may outweigh the benefits..

N.C. never seems to have enough tax money for schools, roads, and basic programs for the people but when a multibillion-dollar company wants to locate in N.C. suddenly there is plenty?

Where is the money going to come from and who and what N.C.program will have to sacrifice for this company that measures it wealth in billions and wanted to come to the Triad to begin with.

Many advocates will justify the hundreds of millions being spent because Fed Ex will bring other companies to the Triad. But will legislators have to manipulate another bill to fit their specific needs and spend hundreds of more millions of taxpayers money to bring them here? Where does the Ball stop?

We know many legislators do not like giving incentives but many justify it by saying we will lose out to other states.

An article in The Triad Business News, April 17th,1998 issue ,John Rees, a professor from UNC Greensboro, said "incentives do not play as large a role in corporate decisions as people think. More important are factors such as cost , available labor, and the availability of transportation."

The Piedmont Triad has 97% employment rate. This was accomplished with out excessive and specific incentive packages to large companies. Our taxpaying money has been going to build our infrastructure . The great access to major highways, good schools, central location and has made companies like Fed Ex choose the Triad based on its own merits. But how

can we continue to build our infrastructure and attract more businesses when our tax money is going to profitable businesses?

Giving incentives packages in prosperous cities like the Triad will complicate issues.

1) Who will monitor the promises the incentive companies make for money invested , jobs, and wages?
2) Is there any mechanism in government to payback the public if incentives companies do not deliver on promises?
3) If an existing taxpaying company starts losing employees to non-taxpaying incentive companies don't you think there will be resentment?
4) What if an existing taxpaying company threatens to leave do we offer incentives to keep them here?
5) At what point do these increased incentives affect investment bond rating? How many existing companies will we alienate before we realize this is not right and costs too much?.

These are questions that should be answered before this bill is considered. We want continued growth and development but not at the expense to taxpaying residents, our infrastructure, existing companies and future companies that want to locate in N. C.

Please postpone the voting of this Bill until all these questions today are addressed.

Thank You
June 25th, 1998

JIM HOGAN - GREENSBORO

Ladies and Gentlemen I come here today to voice my opposition to the Economic Opportunity Act of 1998 as it is now written. I believe portions of this act to be a gross misuse of public funds. Philosophically I have strong reservations against financial support by government for any private commercial enterprise. However, as a practical matter, I can understand and support your efforts to attract major companies to blighted, economically depressed areas of the state; areas which these companies would otherwise avoid. A paper from the Commerce Committee titled Philosophy Underlying Credits Under William S. Lee Act supports my view. It clearly states that large incentives be targeted to distressed areas of the state.

If this was the intent of the William S. Lee Act, and I believe it was; how can you justify an amendment that gives millions of dollars in credits to a milti-billion dollar company wanting to locate in the Triad. This area of our state is far from "distressed" – it is vibrant. We in the area are blessed with nearly full employment. Our population is educated and skilled. Our infrastructure, conducive to further business development as it now stands, is slated for major improvements in the near future. The area is consistently ranked among the top places in the nation in which to raise a family. In short, we have an overall business environment that is attractive on its own merits, without incentives.

Many have voiced the opinion that if North Carolina does not wholeheartedly jump on this corporate welfare bandwagon major development opportunity will pass us by as the corporate giants go elsewhere. I submit to you that the financial incentives pertaining to the establishment of an air courier hub in Greensboro were not an essential part of the decision of Federal Express to locate in the area. In fact, their decision was made over two years ago when they informed their employees that their mid-Atlantic facility was targeted for Greensboro. The fact that every level of government is now willing to shower public money upon them is just icing on the cake.

I fear that this amendment, if passed, will set us upon a slippery slope. When will the handouts stop? Wouldn't other corporations expect to receive their slice of the pie? Who will foot the bill for the infrastructure required to support all the new development? If the large corporations are not paying their fair share, who will take up the slack? Small business? Working people?

Serious review must be made of this proposed amendment. Substantial incentives exist in the current law. Why is it necessary to expand what is already a lucrative package? There is really no need to rush this legislation. FedEx is not projecting to be in operation until 2003. If the increased incentives are such a good thing, sever them from this bill and propose them as stand alone legislation in your next full session.

Thank you.

June 25, 1998

Mr. Chairman, Members, and Guests:

My name is Christine Peeler and I live in Greensboro.

First, I would like to call your attention to Section 11 and 12, Part 3 and 4, of Senate Bill 1569 or the Economic Opportunity Act of 1998, which is a modification of the William S. Lee Quality Jobs and Business Expansion Act. Why is the Piedmont Triad Airport Authority--a public body--being exempted from the bidding law? Part 3 grants exemption to the Piedmont Triad Airport Authority from getting sealed bids, which are then opened simultaneously in public, in connection with this project (the proposed FedEx hub in Greensboro and related construction projects) for a period of 5 years. This bidding law was instituted by the N.C. Legislature--in its wisdom--to prevent corruption in the awarding of construction contracts.

Why suspend a N.C. statute you created yourselves?

Secondly, how do you feel as a legislator knowing that all this proposed state tax money will be going to one specific company--Federal Express, an $11.5 billion dollar corporation--to locate in an area that is **not economically depressed?** As stated by others, Greensboro has a less than 3% unemployment rate. Many employers in our area are as nervous as that long-tailed cat in a room full of rockers about the prospect of FedEx coming to Greensboro. Why? Because they are facing **labor shortages**; some are begging for people. They are wondering "Where is FedEx going to get their employees from?" Will their employees leave to see if the "grass is greener" at FedEx? It seems to me we have a responsibility to and should have loyalty to the companies we have now in Greensboro: What about their labor needs? Why should they be expected to pay taxes that an $11.5 billion dollar corporation does not have to pay? **Fairness** is a real issue here.

It has been said that these FedEx jobs will get people off public assistance. I would like to read an excerpt from a letter to the Editor of the News and Record:

> "I am employed by a large institution within walking distance of areas where people on assistance live. We provide training, full-time work and excellent benefits, and cannot fill our vacant positions, which pay much better than FedEx wages." (6/22/98)

Thirdly, were any of you just a little bit surprised when the Greensboro Chamber of Commerce and the Piedmont Triad Airport Authority announced that FedEx was coming to Greensboro and these are the tax incentives they are going to get...before any of you had a chance to discuss and vote on this? They presented it as a "done deal"--both to you and to the community

of Greensboro, including those **20,000** residents who are going to be negatively impacted by the proposed third runway, **10,000** of them from **2,500 feet** to **2 miles** in distance from this runway. **Somebody** made a commitment to FedEx on behalf of the legislature regarding tax incentives. Are we not still a government of the people, by the people, and for the people? Our own representative says he heard of this "done deal" just 2 hours before it was announced.

We many thousands of people who live in Northwest Guilford County--who are productive, responsible, caring citizens, who contribute greatly to the welfare of the Triad as a whole--are feeling betrayed. We are being dismissed as expendable for "the greater good," although that concept never meant that if harm came to some folks, it was O.K.

Many of you may not be aware that the proposed third runway is **NOT** at the airport; it is opposite the airport on the **OTHER** side of a major highway--Bryan Boulevard--which is why the need for huge bridges and tunnels to taxi planes back and forth, and why the need for rerouting a heavily travelled road--Old Oak Ridge Road.

The land surrounding this small strip of land the airport owns on the other side of Bryan Boulevard has been zoned "residential" for **25 years.** People in the established communities there put a lot of time, effort, money, and love into their homes and communities. An elderly couple next door to me hoped to retire in peace and quiet there, hoped to see their home grow in value (as it should), so that when they must sell it, they will have enough money for their remaining years. Just within the first 1/2 mile to 2 miles of this proposed third runway site are **2,800 homes** in the **$200,000 to $500,000** category. Has anybody counted the cost of buying these homes as the Airport Authority in Indianapolis, where a FedEx hub is located, has had to do? In Indianapolis they have had to buy homes as far as 4 miles out--958 in all so far. It would cost many hundreds of millions, conservatively speaking, to buy the Greensboro homes.

I know you are being bombarded by the Greensboro Chamber of Commerce's and the Airport Authority's propaganda machine and their lawyers about the benefits of FedEx locating in Greensboro. But you need also to consider the costs: not only in the tax incentives, but in the costs to existing businesses, and in the human misery that will be generated by the FedEx proposal as it now stands.

Please carefully consider all these costs as well as the possible, not assured, but possible benefits. What is the hurry in passing this legislation? Allow time to study these questions. There is more to this than meets the eye.

Mr Chmn + Members of the Committee

Ben Beasley Constructs

Thanks - Representing North Carolina's Northeast Partnership

Rick Watson - Executive Director sends his Regrets

Working on a ~~400M dollar potential~~ major spin-off project in our AREA. Gov Hunt + Secretary Carlisle have also met with - this group -

We strongly urge PASSAGE of this legislation - Biggest Impact EVER

Nucor's 350 million dollar investment will create 300 high paying Jobs

Avg Salary 60,000 Present Avg 18,000

This is 3X the Region Average

20,000 people commute daily to VA each day in our AREA

Potential spin-off businesses could produce over $2 billion dollars in additional Investment + over 2,000 new jobs in the Northeast

We urge your support to pass this legislation

It will make a difference & Improve the economy & well-being of the citizens in our AREA —

Thank-you

John
LOCKE
FOUNDATION

Statement on the "Economic Opportunity Act" by

John Hood, President
John Locke Foundation

June 25, 1998

LADIES AND GENTLEMEN: Some supporters of the tax incentives contained in the Economic Opportunity Act have compared them to playing poker. One senator argued that while offering incentives doesn't guarantee, it is a necessary first step. He said: "In this game, you can play or you lose."

The poker analogy is a good one, though not in the way he meant it. After all, to play poker well one must, in the words of a famous song, "know when to hold 'em and know when to fold 'em." It is particularly important not to throw good money after bad, and not to play in a game that has all the markings of being rigged.

Here lies the problem. The tax incentive game is being played with a stacked deck. All too often, firms make decisions based on objective criteria — such as labor costs and proximity to markets— and then bluff the state or locality in question to toss additional tax breaks or other subsidies into the pot. It is foolish to play a game in which it is virtually impossible to win anything that you don't already have coming to you.

There is little evidence that states that offer special tax incentives create more jobs or income growth than do states that maintain tax equality. The most recent academic treatment is *Industrial Incentives: Competition Among American States and Cities*, just published by the Upjohn Institute for Employment Research. The coauthors are sympathetic to the idea that incentives might affect some location decisions. But they are honest scholars and admit that research has yet to establish such a link. They write: "The incentives taken in the aggregate are still not enough to clearly offset the effects of state taxes."

The risk that incentives are merely gifts to companies already moving to a jurisdiction can be seen in both of the recent locations motivating the Economic Opportunity Act. The fact that Federal Express was likely to locate a regional hub at Piedmont Triad Airport was an open secret during the months of negotiation among competing sites.

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James Donnelly, a spokesman for FedEx, told us that while "financial considerations were an important factor in the decision, the overriding factor was how well operations at this airport would help us serve our customers." Similarly, an official of Nucor Corp. told Locke earlier this month that the company selects its sites by looking at rail, water, land, and labor force needs. After making the decision on those grounds, Nucor negotiates for tax or other incentives.

The bottom line is that in both the FedEx and Nucor cases, state incentives were either marginal or irrelevant to the investments — and cannot confidently be given credit for "creating" the jobs in question.

There is still another problem. Even if the "development zones," expansions of Bill Lee Act tax credits, and other provisions of the bill could be shown to enhance the state's economy, they would still likely run afoul of the state constitution, which requires that the power of taxation be exercised in "a just and equitable manner." Two cases are relevant here. One is the 1941 case of *County of Rockingham vs. Board of Trustees of Elon College,* in which the court found that "the thesis of the Constitution is that all similarly situated are entitled to the same treatment from the government they support." Based on this concept of equitable taxation, the state should not be able to differentiate firms on the basis of location and assess different income tax rates to them.

Another case is even more on point, the *Hajoca Corp. v. Clayton* case of 1971. In that case, the Supreme Court held that a state sales tax increase that occurred in only 25 of the state's 100 counties was unconstitutional. A state tax, such as the income tax or the state portion of the sales tax, must apply equal to all firms within an industry class, regardless of location. Local taxes, of course, such as property taxes or occupancy taxes authorized by local referenda, can and do vary by city or county.

I can virtually guarantee that the tax credit portions of the Economic Opportunity Act, and probably the Bill Lee Act itself, are going to be challenged in court. You might want to keep that in mind in your deliberations.

The special tax credits already included in the Bill Lee Act will cost the state $77 million in revenues by FY 2001 — nearly enough to cut the corporate income tax rate for everyone by an additional percentage point. Any new incentives will further distort the tax system. Given that North Carolina continues to impose relatively high tax rates on individual and corporate income, reducing that burden while maintaining and improving the quality of core services such as public education and law enforcement would promote economic development across the state, fairly and efficiently, without turning the tax code into Swiss cheese and favoring big business over small business. Thank you.

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HALIFAX DEVELOPMENT COMMISSION

Mr. Chairman and Honorable Legislators, my name is George W. Draper, Jr.; I am the Mayor of Weldon and Chairman of the Halifax Development Commission. I appear before you today to speak in support of the Economic Opportunity Act of 1998 – Senate Bill 1569 and House 1688.

Halifax County and the entire Northeast Region have historically been economically distressed – economically handicapped. In fact, of the state's Tier I counties, those that are most economically distressed, 7 of the 10 are in the Northeast, with Halifax being one of those.

The William S. Lee Act provided us some excellent tools that helped us all to become more competitive. However, if we are to be in a position to land the large projects, those that can have a profound impact on the economic well being of the entire region, we must have the incentives that are provided in the Economic Opportunity Act of 1998.

The Nucor plant announced in Hertford County is such a project. The impact of the location of Nucor in Hertford County will be felt throughout the region. We in Halifax County are tremendously excited about Nucor and what it will mean in spin off companies that may consider us for a location. In addition, there is a large project considering our county that could create the same opportunities as Nucor. To land this project we need the incentives provided in the Economic Opportunity Act of 1998. The ramifications of the jobs and investment that this company would bring would have a tremendous positive effect on our economy and help us break the cycle of poverty that has existed way too long in our area. Halifax County's unemployment rate is currently over 10%, well above the state average. We desperately need jobs and investment so that we can provide for our families.

North Carolina is, and has been, a prime location for industry as evidenced by the great success that our state has historically enjoyed in new plant locations. However, Halifax County and the Northeast Region have not shared in this prosperity. For us to be successful we must be aggressive in our efforts to attract industry, and we must have the tools to be competitive. Competitive to the point where we stop losing projects to Virginia and South Carolina who have similar incentive legislation in place.

The rules and the game itself of industrial recruitment have changed and we need the cards to win. The Economic Opportunity Act of 1998 will provide the needed tools for Halifax County and the Northeast to be competitive—and to bring jobs and investment, and ultimately economic prosperity to our corner of North Carolina.

Help us help ourselves.

On behalf of the Town of Weldon and the Halifax Development Commission, I urge you to support and pass the Economic Opportunity Act of 1998.

Thank you for your time.

6/24/98

Halifax Community College • PO Box 246 • Roanoke Rapids, NC 27870 • 919-536-2522 • FAX 919-536-2241

House Finance Committee
June 25, 1998

Good Afternoon. I am ~~Quinton Qualls~~, Chairman of the Halifax County Board of Commissioners and on behalf of Halifax County I am here to request your support for additional economic development incentives to bring industry to North Carolina.

I could spend all afternoon talking about the distressed economic conditions present in Halifax County and northeast North Carolina, but I am sure you are aware. Instead I would like to share with you how vitally important it is for the State of North Carolina to continue and increase the number of economic development incentives offered to attract industry to our state.

Nobody likes incentives, but they are needed to make North Carolina competitive with Virginia and South Carolina. The incentive packages that are being put together for Nucor Steel will benefit not only Hertford County, but all of Northeastern North Carolina as well. We expect that some the residents in Halifax County will be employed at this facility.

Likewise, the recycling company that is currently considering Halifax County for $160 million investment, creating up to 200 jobs during Phase I with average wages of $30,000 annually will have a profound effect on eastern North Carolina and the State of North Carolina. This project alone will have a huge spin-off effect as other companies are created or expanded to service this project.

While North Carolina is a prime location for new and expanding industry, is a right-to-work state and has talented and capable workers; if we do not match the incentives and aggressive recruitment practices of our neighboring states we will lose and North Carolinians will lose.

That's why I implore you to continue support of and increase the number of reasonable incentives offered companies such as Nucor, FedEx and the recycling company looking at Halifax County. Let's not lose these much needed industries to Virginia or South Carolina. Again, no one likes incentives, but we must remain competitive in today's global economy.

Remarks to House Finance Committee - Public Hearing
June 25, 1998
Leslie H. Bevacqua
North Carolina Citizens for Business and Industry

I am Leslie Bevacqua, Vice President of Governmental Affairs for N.C. Citizens for Business and Industry and I appreciate the opportunity to address the committee.

The Bill Lee Quality Jobs Act passed by the General Assembly in 1996 and amended in 1997 made significant changes in North Carolina law which have helped many industries across the state. The idea behind that original legislation was to expand North Carolina's incentives program to make the state more competitive for new and expanding industry. We appreciate your enactment of that legislation.

The Economic Opportunity Act of 1998, which is before you, builds on what is already in place with the Bill Lee Act.

Much of the public attention has been focused on the incentives for Federal Express and Nucor and I will address those, but let's not lose sight of the other parts of the bill that will also encourage additional business investments.

The changes to the central administrative office credit, the credit for investing in machinery and equipment, the expanded credit for research and development and the credit for worker training are all improvements to the original act and should serve as incentives for expansion and growth of industries already located in the state.

Regarding the other incentives, the General Assembly is called on frequently to make tough decisions and this is one of those times.

To the extent possible we need to strike a balance in doing all that we can for companies who are already located in North Carolina and encouraging new companies to locate and make investments in our state. We are proud of the companies that are already here and are grateful for all that they are doing to keep our economy strong.

But we continue to compete with other states. When I talk with local chambers of commerce, they tell me that the competition is tough and that we're going to have to do some new things if North Carolina is to remain a leader in economic development.

Some regions of our state have very specific needs and from time to time, exceptions will have to be made to help those regions grow. This bill ~~[illegible]~~ includes such exceptions.

Information that we have seen, indicates that the industries locating in Hertford County and in the triad will facilitate the expansion of secondary industries and should result in even greater investment in those regions. As a result, an investment by the state in these companies should yield additional dollars for the state.

Senator Horton gave us a bit of a history lesson in his remarks on the Senate floor yesterday. He talked about ~~exceptions~~ incentives that have been ~~made for~~ given to different parts of the state for over 100 years. He talked about the farm to market roads that were built in areas of the state to make it possible for farmers to sell their products. These roads weren't built everywhere, but a need existed and building them in certain parts of the state addressed that need.

Incentives are not new --- ~~[illegible]~~ these may just be different than what we have been used to in the past, but they are not new.

The bill doesn't ~~help~~ treat every business equally, I wish it did, ~~but~~ This legislation is needed and we encourage you to support the bill.

→ but sometimes because of circumstances, exceptions need to be made.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1569*
Proposed Committee Substitute S1569-PCS6844-LC

Short Title: Economic Opportunity Act of 1998. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROMOTE DEVELOPMENT IN ALL AREAS OF THE STATE BY MODIFYING THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT, CREATING STATE DEVELOPMENT ZONES, PROVIDING FUNDS FOR INFRASTRUCTURE IN RURAL AND LESS PROSPEROUS AREAS, ENCOURAGING DEVELOPMENT OF AIR COURIER HUBS, AND ENCOURAGING DEVELOPMENT OF THE RECYCLING INDUSTRY IN TIER ONE COUNTIES.

The General Assembly of North Carolina enacts:

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II. INFRASTRUCTURE FUNDS
III. AIR COURIER HUBS
IV. RECYCLING INDUSTRY
V. EFFECTIVE DATES

PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

The following definitions apply in this Article:

(1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~ A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(2) Data processing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(2a) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(4a) Reserved.

(4b) Large investment. -- Defined in G.S. 105-129.4(b1).

(5) Machinery and equipment. -- Engines, machinery, tools, and implements ~~that are capitalized by the taxpayer for tax purposes under the Code and are~~ used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and ~~distribution. -- Defined in the Standard Industrial Classification Manual issued~~ wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

"**§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"**§ 105-129.3A. Development zone designation.**

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts and census block groups in the most recent federal decennial census that meets all of the following conditions:

(1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) ~~Manufacturing or processing.~~ Manufacturing.
(5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central administrative office,~~ if the taxpayer hires at least 40 additional full-time employees to fill new positions at the ~~office.~~ office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are

available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and~~

~~stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the

sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the~~ a credit with respect to a large investment may be carried forward for the succeeding ~~five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving

eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located:~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development

zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-

Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section ~~41~~ 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for~~ the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the

most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. ~~Economic~~ Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants ~~for economic development that will ensure that no~~ to ensure that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. ~~105-129.3 and, to~~ 105-129.3.

(2) To the extent practicable, ~~that~~ priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. ~~105-129.3.~~ 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing,~~ eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing,~~ eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations.~~ eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use

up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) per new job created up to a maximum of ~~four hundred thousand dollars ($400,000)~~ five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(a1) Definitions. -- The following definitions apply in this section:

(1) Air courier services. -- A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1c) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(1d) Eligible industry. -- A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(3) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ North American Industry Classification System adopted by the United States Office of Budget and Management.

(4) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(6a) Interstate air courier. -- A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.

(6b) Hub. -- The airport in this State (i) to which an air courier has allocated under G.S. 105-388 more than fifty percent (50%) of its aircraft value apportioned to this State and (ii) at which the air

courier receives packages from consolidation locations for intrastate and interstate sorting and distribution."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Sales of the following items to an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

"(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms 'interstate air courier' and 'hub' have the meanings provided in G.S. 105-164.3."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. RECYCLING INDUSTRY

Section 12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Tax Incentives for Recycling Facilities.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

(1) Reserved.

(2) Reserved.

(3) Large recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(b).

(4) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(5) Major recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(a).

(6) Owner. -- A person who owns or leases a recycling facility.

(7) Post-consumer waste material. -- Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling facility either directly or indirectly, such as through a broker or an agent.

(8) Purchase. -- Defined in section 179 of the Code.

(9) Recycling facility. -- A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land surrounding the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.

"**§ 105-129.26. Qualification; forfeiture.**

(a) Major Recycling Facility. -- A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(b) Large Recycling Facility. -- A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(c) Forfeiture. -- If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. -- To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Reports. -- The Department of Commerce shall report to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of reinvestment credit refunded to each major recycling facility under G.S. 105-129.28.

"§ 105-129.27. Credit for investing in large or major recycling facility.

(a) Credit. -- An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. -- The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of

Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. -- The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. -- The sale, merger, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. -- If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. -- A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

"§ 105-129.28. Credit for reinvestment.

(a) Credit. -- A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. -- The credit allowed to a major recycling facility under this section for the taxable year may not exceed the applicable annual cap provided in the following table:

Taxable Year	Cap
1998	$ 150,000
1999	$ 640,000
2000	$ 3,860,000
2001	$ 8,050,000

2002	$ 9,550,000
2003	$10,100,000
2004-2007	$10,400,000

(c) Reduction. -- For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed by this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. -- For the first ten taxable years after the owner begins construction of the major recycling facility, the owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

Expenses incurred for the purposes allowed in this subsection during a taxable year in the ten-year period may be counted toward a credit allowed in a later taxable year in the ten-year period. If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and the credit allowed the owner under this section for the following taxable year shall be reduced by that amount in accordance with subsection (c) of this section.

After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b) and adding a new subdivision to read:

"(8) Major recycling facility. -- Defined in G.S. 105-129.25."

Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment."

Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to read:

"(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility."

Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

"(g) Major Recycling Facilities. -- The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred."

Section 17. G.S. 105-164.14(f) reads as rewritten:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this

subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund."

Section 18. G.S. 105-275(8)b. reads as rewritten:

"b. Real or personal property that is used or, if under construction, is to be used ~~exclusively~~ predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as ~~its primary~~ a purpose recycling or resource recovering of or from solid waste."

Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed effective for taxable years beginning on or after January 1, 2008. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S. 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its repeal.

The sole purpose of this ten-year sunset provision is to allow a determination to be made whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships to transport materials and products to and from the facility. It is the expectation and intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is determined that, based on audited documentation submitted by a major recycling facility and verified by the Secretary of Commerce, that any major recycling facility continues to experience these additional transportation and transloading expenses as of 2008.

PART V. EFFECTIVE DATES

Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 21. Part II of this act becomes effective July 1, 1998.

Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of

this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 23. Section 12 of this act is effective for taxable years beginning on or after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998, and apply to sales made on or after that date. Section 18 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV of this act is effective when it becomes law.

FISCAL IMPACT OF PCS FOR SB 1569 (HB 1688)
ECONOMIC OPPORTUNITY ACT OF 1998
STATE GENERAL FUND ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Extend **Lee Act** targeted investment tax credit to certain operating leases	TY 99	-	-	-1.80	-2.48	-2.96	-2.96	-2.96
Levies $75 application fee for **Lee Act** Credits	TY 99	0.06	0.07	0.07	0.08	0.09	0.09	0.10
Provides **Lee Act** additional tax incentives for establishments located in state development zones	TY 99	-	-	-0.42	-1.27	-2.54	-4.01	-4.01
Lowers sales tax on equipment sold to interstate **air couriers** for handling and storing materials from 4% to 1%, $80 limit	1/1/01	-	-	-	-0.36	-0.36	-0.08	-0.08
Provides sales tax exemption for sales of lubricants, repair parts, and accessories for aircraft assigned to **air courier hub**	1/1/01	-	-	-	-	-	-0.16	-0.16
Provides refundable corporate income tax credit for **major recycling facilities** equal to additional transport expenses	TY 98	-0.15	-0.64	-3.86	-8.05	-9.55	-10.10	-10.40
Lower 4% state sales tax to 1%, $80 limit for cranes, foundations, transportation equipment, and materials handling equipment at **major recycling facility**. Exempts from state sales tax lubricants and other additives for vehicles and machinery used at plant, and other materials and supplies used or consumed in manufacturing process.	9/1/98	-0.27	-0.11	-0.17	-0.19	-0.19	-0.21	-0.22

TY = Tax Year

FISCAL IMPACT OF PCS FOR SB 1569 (HB 1688)
ECONOMIC OPPORTUNITY ACT OF 1998
STATE GENERAL FUND ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Exempts from 2.83% state sales tax electricity used at **major recycling facility.**	9/1/98	-	-	-0.03	-0.07	-0.09	-0.11	-0.12
Provides annual sales tax refund for building materials, supplies, fixtures, and equipment that become part of **major recycling facility**	9/1/98	-1.33	-	-	-	-	-	-
Expands targeted investment tax credit for investment in machinery and equipment at **major recycling facility**	TY 98	-0.53	-0.53	-0.60	-0.60	-0.73	-1.05	-2.43
TOTAL - STATE GENERAL FUND		**-2.22**	**-1.21**	**-6.81**	**-12.97**	**-16.33**	**-18.59**	**-20.28**

TY = Tax Year

FISCAL IMPACT OF PCS FOR SB 1569
ECONOMIC OPPORTUNITY ACT OF 1998
LOCAL GOVERNMENT REVENUE ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Lowers state sales tax on sales handling and storing materials sold to interstate **air couriers** from 4% to 1%, $80 limit	1/1/01	-	-	-	-0.24	-0.24	-	-
Provides sales tax exemption for sales of lubricants, repair parts, and accessories for aircraft assigned to **air courier hub**	1/1/01	-	-	-	-	-	-	-
Allows property tax exemption for aircraft owned by **air courier** and apportioned for property tax purposes to **courier's hub** in the state	TY 01	-	-	-	-0.35	-0.37	-0.39	-0.41
Exempts from local sales tax cranes, foundations, transportation equipment, materials and supplies, lubricants and other additives for vehicles and other machinery used at major recycling facility and other materials and supplies used or consumed in manufacturing process at **major recycling facility**	9/1/98	-0.13	-0.05	-0.09	-0.09	-0.09	-0.11	-0.11
Provides annual sales tax refund for building materials, supplies, fixtures, and equipment that become part of **major recycling facility**	9/1/98	-0.67	-	-	-	-	-	-

TY = Tax Year

NOTE: These estimates are preliminary, based on adjustment of cost estimates supplied by Department of Commerce. Some of the losses are associated with economic activity that has not taken place and has not been built into economic assumptions that are part of State General Fund revenue forecast.

FRD, 6/17/98

EXPLANATION OF SENATE BILL 1569[1]:
Proposed Committee Substitute (June 16)
Economic Opportunity Act of 1998

TO: House and Senate Finance Committees
FROM: Martha H. Harris, Staff Attorney
DATE: June 16, 1998
SPONSOR: Senator Hoyle

This bill is designed to promote economic development throughout the State in five ways[2]:

1. It makes various amendments to the William S. Lee Act to encourage large investments and remove technical problems with the Act.
2. It authorizes enhanced incentives for development zones, which are economically distressed areas located within municipalities.
3. It expands and modifies the Industrial Development Fund to provide financial support for projects in rural and less prosperous areas of the State.
4. To encourage development of air courier hubs, it provides sales tax and property tax reductions for air couriers and provides a temporary bidding law exemption for specific projects of the Piedmont Triad International Airport Authority.
5. To encourage development of the recycling industry in Tier One counties, it provides an investment tax credit for large and major recycling facilities that locate in Tier One counties and, in addition, it provides a refundable reinvestment credit and sales tax reductions for major recycling facilities.

William S. Lee Act Modifications. Part I of the bill makes a number of changes to the William S. Lee Quality Jobs and Business Expansion Act, some technical and some substantive. Unless a different date is given, these changes all become effective beginning with the 1999 tax year.

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[1] The House companion to this bill is House Bill 1688, introduced by Representative Gray.

[2] The proposed committee substitute differs from the original bill in four ways. First, it authorizes local governments to use up to 2% of a grant from the Industrial Development Fund to administer the grant and to verify that the funds are used for the required purposes. Second, it specifies that under the Bill Lee Act, the wage standard for a development zone is the same as in a Tier One County. Third, it narrows the sales tax reductions for air carriers to apply only to air courier hubs. Fourth, it adds Part IV of the bill to encourage development of the recycling industry in Tier One counties.

Part I makes two changes to the central administrative office credit that was enacted last year. First, it allows the credit to be taken against the insurance gross premiums tax. This change will permit insurance companies to qualify for the credit. Second, it clarifies that a central administrative office meets the requirement for creating new jobs if the jobs begin before the office property is in service but are located at a temporary facility that the business occupies while waiting for its office property to be completed.

Part I also makes two changes to the credit for investing in machinery and equipment. First, it provides that for projects that span two tax years, the threshold applies only once to the investment. Otherwise, a project put in service from May through September would receive more benefit than a project put in service from November through March. This change goes into effect beginning with the 1998 tax year. Second, it expands the credit to include machinery and equipment the taxpayer uses under an operating lease, but only if the machinery and equipment are part of a project valued at $150 million or more. Otherwise, the current law allows the credit only for machinery and equipment the taxpayer acquires under a capital lease or purchases and capitalizes.

Part I expands the credit for research and development. The existing credit for research and development piggybacks the federal credit, allowing a State credit equal to approximately ¼ of the federal credit as it relates to North Carolina activities. In 1997, Congress enacted an alternative credit for research and development. The bill modifies the State credit to also allow a credit equal to approximately ¼ of the federal alternative credit as it relates to North Carolina activities.

Part I simplifies the credit for worker training. In order to qualify under current law for the credit for worker training, the taxpayer must get its planned training certified in advance by the Department of Community Colleges. This requirement has been difficult both for taxpayers and for the Department of Community Colleges. The bill replaces the current credit measured by costs of training with a credit for wages paid to workers while they are being trained (not including on-the-job training). The credit is restricted to employees for whom the taxpayer qualifies for the jobs tax credit and employees being trained to operate machinery and equipment for which the taxpayer qualifies for the credit for investing in machinery and equipment.

Finally, Part I makes a number of administrative and technical changes to the William S. Lee Act. First, it levies a $75.00 application fee on taxpayers who seek to qualify for a credit. The proceeds of the fee will help the Department of Commerce defray its costs in administering the credits. Most states with similar incentives laws require a fee, and their fees tend to be much higher. The application fee would become effective January 1, 1999. Second, the bill extends

the credit carryforward period for investments over $150 million. Currently, the credit may not reduce the taxpayer's tax liability by more than half, and any excess may be carried forward for up to five years. The bill provides that for large investments, the excess may be carried forward for up to 20 years. Third, the bill clarifies that credits are allowed only for new and expanding businesses, not for existing businesses that are sold to another taxpayer. The bill provides an exception, however, for a business that has closed, has filed a federally required notice that closure is imminent, or has been purchased in an employee buyout. In these cases, the business will be able to qualify for the credits to the same extent as a new business. Fourth, the bill clarifies the definitions of the different types of businesses that are eligible for credits[3] and clarifies the method of calculating the investment tax credit and the business tax credit for property acquired by a capital lease.

State Development Zones. Part I of the bill provides for the designation of economically distressed areas located within municipalities as State development zones, and authorizes enhanced incentives for businesses that locate in a development zone. This change becomes effective beginning with the 1999 tax year. The bill defines a development zone as an area (1) consisting of one or more contiguous census tracts and block groups, (2) with a population of 1,000 or more, at least 20% of whom are below the poverty level, and (3) located at least partly in a municipality with a population over 5,000. If a business locates in a development zone, the wage standard it has to meet is the same as for Tier One counties - slightly lower than the standard for other counties. In addition, if a business locates in a development zone, its maximum worker training credit is $1,000 rather than $500, it receives an additional $4,000 per job on its jobs tax credit, and there is no threshold for the credit for investing in machinery and equipment.

The Secretary of Commerce will designate development zones upon request of a taxpayer or a local government. The designation is effective for four

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[3] The bill changes statutory references from the Standard Industrial Classifications (SIC) to the North American Industrial Classification System (NAICS) to conform to the federal system. These references are used in the William S. Lee act to define various types of businesses. The bill also changes the term "manufacturing and processing" to "manufacturing" and the term "warehousing and distribution" to "warehousing and wholesale trade" to conform to the NAICS. In April 1997, the United States Office of Management and Budget announced the adoption of a new industry classification replacing the SIC, a system used to classify most of the data we have about industries or kinds of business in our economy. The updating of industry classifications is nothing new. Since its origination in the 1930s, the SIC system has been revised or updated every 10 or 15 years to reflect new developments in the American economy and to address problems identified by data users and statistical agencies. It was last revised in 1987.

years. The bill provides that a development zone may qualify for priority in receiving community development block grants if the municipality's governing body adopts a strategy to improve the zone and establishes a committee to implement the strategy, in accordance with guidelines established by the Department of Commerce.

Infrastructure Funds. Part II of the bill states the intent of the General Assembly to appropriate funds to the Industrial Development Fund and the Utility Account of the Industrial Development Fund. The Governor's budget requested an appropriation of $32 million, $18 million for the Fund and $14 million for the Utility Account. Under current law, money in the Utility Account can be used in Tier One counties for construction or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or for existing, new, or proposed industrial buildings to be used in manufacturing and processing, warehousing and distribution, or data processing. The bill would expand the scope of the Utility Account to include Tier Two counties.

Under current law, the Industrial Development Fund provides funding for manufacturing projects in Tier One, Two, and Three counties as well as in areas experiencing major economic dislocations. The funds may be used for equipment, capital improvements, and utility distribution lines. Projects in Tier Two and Three Counties are required to match the State funds on a $1/$3 basis. The funding is capped at $4,000 per job to be created and $400,000 per project. The bill would raise the per-job cap to $5,000 and the per-project cap to $500,000. The bill would also expand the industries covered by both the Industrial Development Fund and the Utility Account to include all of the following: manufacturing, central administrative offices, air courier services, data processing, and warehousing and wholesale trade.

Under current law, funds in the Industrial Development Fund and the Utility Account are used for grants to local governments and, in some cases, loans to businesses through the local government and a bank that matches the loan. The bill would clarify that a local government that receives funds, may, if necessary, use up to 2% of the funds to verify that the funds are used as required by law and otherwise to administer the grant or loan.

Air Courier Hubs. Part III of the bill provides sales tax and property tax reductions for interstate air couriers in order to encourage the development of air courier hubs in North Carolina. An air courier is an air carrier that delivers individually addressed letters, parcels, and packages. Effective January 1, 2001, the bill provides that sales to an interstate air courier of equipment for handling and storing materials at its hub will be subject to a reduced sales tax of 1%, capped at $80 per item. In addition, the bill provides a sales tax exemption for

sales to interstate an air courier of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at the air courier's hub in this State. Effective beginning with the 2001 property tax year, the bill provides a property tax exemption for aircraft owned by an air courier and apportioned for property tax purposes to the courier's hub in this State. A hub is the place in this State where the air courier allocates for property tax purposes more than 50% of its North Carolina aircraft value and where it receives packages from consolidation locations for sorting and distribution.

Part III also grants a bidding law exemption for the Piedmont Triad International Airport Authority. The exemption is effective for a five-year period beginning January 1, 1999, and applies to design and construction of an air freight distribution facility on airport property, and related supplies, equipment, and services.

Recycling Facilities. Part IV of the bill provides tax incentives for "large" and "major" recycling facilities located in Tier One counties at the time of initial construction. A recycling facility is a plant that manufactures products, most of which are made from at least 50% post-consumer waste material. The facility also includes related infrastructure, buildings, and equipment on land surrounding the plant. A large recycling facility is one that will involve at least $150 million in new investment and 155 new jobs within a two-year period. A major recycling facility is one that will involve at least $300 million in new investment and 250 new jobs within a four-year period. In order to qualify for the applicable tax incentives, the owner of the facility must obtain certification from the Department of Commerce that it will meet the minimum investment and new job requirements. If the facility fails to meet either requirement within the applicable time period, it forfeits any tax benefit it received as a result of being certified.

Part IV provides an investment tax credit for both large and major recycling facilities, effective beginning with the 1998 tax year. This investment tax credit is in lieu of the investment tax credit provided in the William S. Lee Act. The recycling facility investment tax credit differs from the Bill Lee Act credit in the following ways:

1. The Bill Lee Act credit is equal to 7% of the cost of machinery and equipment, while the large recycling facility credit is equal to 20% of the cost and the major recycling facility credit is equal to 50% of the cost.
2. The credit is allowed at the time the owner of the recycling facility accrues expenses to purchase or lease the machinery and equipment, rather than at the time the machinery and equipment are placed in service, as under the Bill Lee Act. If the recycling facility fails to put

the machinery and equipment in service within 30 months after taking the credit, the credit is forfeited and must be repaid.

3. The credit is allowed against both the corporate franchise tax and the corporate income tax. Under the Bill Lee Act, the credit is allowed against either but not both of those taxes.
4. The credit may equal 100% of the tax due from the owner of the facility. Under the Bill Lee Act, the credit is limited to 50% of tax due, so that the taxpayer will be paying some tax in every case.
5. The excess credit may be carried forward for 25 years. Under the Bill Lee Act, as revised by this bill, the relevant carryforward period would be 20 years.

Part IV also provides to major recycling facilities locating in Tier One counties a refundable corporate income tax "credit for reinvestment," effective beginning with the 1998 tax year. The credit applies if the major recycling facility is not accessible by ocean barge or ship and incurs additional expenses due to transporting its materials and products by alternative modes of transportation. The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap is $640,000. In 2004, the cap levels off at $10.4 million a year. The bill sunsets this reinvestment credit effective with the 2008 tax year. The bill states the intent, however, to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

The reinvestment credit is refundable. That means that if the amount of credit exceeds the major recycling facility's tax liability after all other credits are subtracted, the balance is paid out in cash. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling facility. The facility must document its compliance with this reinvestment requirement and forfeits any part of the credit it spends for another purpose. It is this reinvestment requirement that gives the credit its name.

Part IV provides several sales and use tax reductions for major recycling facilities locating in Tier One counties, effective beginning July 1, 1998. First, it provides that a reduced sales tax rate of 1%, capped at $80 per item, will apply to cranes, foundations, transportation equipment, and materials handling equipment used at the major recycling facility. These items would otherwise be subject to 4% State sales tax and 2% local sales tax. Second, it exempts from sales tax lubricants and other additives for vehicles and machinery used at the plant, and other materials and supplies (not including machinery and equipment) that are used or consumed directly in the manufacturing process. These items would also otherwise be subject to a combined State and local rate of 6%. Third, it exempts from sales tax electricity purchased for use at the major recycling facility. This electricity would otherwise be subject to State sales tax at 3% or 2.83%. Fourth, Part IV provides an annual sales tax refund for taxes a major recycling facility pays directly or indirectly on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility located in a Tier One county.

Finally, Part IV modifies the existing property tax exemption for property used for recycling, effective beginning with the 1999-20 property tax year. Under current law, to qualify for exemption, the property must be used exclusively for recycling and have recycling as its primary purpose. The bill would provide instead that the property must be used predominantly for recycling and have recycling as a purpose. The Department of Environment and Natural Resources determined that these changes would be necessary to prevent a recycling facility from being disqualified because it adds fillers or other materials to the post-consumer waste material when manufacturing products.

VISITOR REGISTRATION SHEET

Public Hearing

House Finance

ame of Committee

June 25, 1998

Date

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NAME	FIRM OR AGENCY AND ADDRESS
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Jon Carr	Jordan Price
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Marilyn BRAXTON	Piedmont Quality of Life Coalition (PQLC) 4200 O'Briant Place GREENSBORO, NC 27410
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Leslie Bevacqua	NCCBI
Mary Carmilia	Mecklenburg County
Natalie Haskins	Charlotte Chamber

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House Finance
ame of Committee

June 25, 98
Date

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KEITH HUNDLEY	WEYERHAEUSER
STAN LOTT	CHOWAN COLLEGE MURFREESBORO, NC 27855
Randy L. Brantley	Hertford Co. E.D.C, and Chowan College P.O. Box 1848; Murfreesboro, NC 27855
Bill Early	Hertford Co. EDC / P.O. Box 429 / Winton, NC 27986
Andy Sands	WCSR
Sandy Sands	WCSR
JACK GALE	6501 LYTHAM COURT GREENSBORO, NC 27410
Marshall Faison	Hertford Co. Comm
Vernie B. Howard	Chairwoman, Hertford County Board of Commissioners, P.O. BOX 116, Winton, N.C.
D.C. Craft	Hertford County POBOX 116 Winton 27985
CHARLES SHAW	VICE CHAIR H.E.NC. PARTNERSHIP EDENTON, NC 27932

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Horse Pasture
Name of Committee

June 25, 98
Date

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Harriet C. Lydick	Same
BEN BERRY	NC's NORTHEAST PARTNERSHIP
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Jonathan Morgan	NCIMED

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House Finance
Name of Committee

June 25, 98
Date

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[illegible]	Chairman Halifax Co. Comm. Halifax Co.
CHARLES ARCHER	HALIFAX CO. MANAGER
Ashley Jamison	Halifax Co. Citizen
Rocky Lane	HALIFAX DEVELOPMENT COMMISSION
Kathryn Sawyer	NC Dept. of Commerce
Willie Riddick	DOR
John Hood	John Locke Foundation
Jonathan Jordan	John Locke Foundation
Andrew Chin	John Locke Found.
Debra Perkinson	Greensboro, NC
Mark Miller	Greensboro

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

June 25, 98
Date

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Debra Swiren	Department of Revenue
Billy Daid	DOR
Sam C Stephens	Guilford Co.
George Theisen	Guilford Co.
Stephanie Stallings	Intern for Sen. Basnight
Paul Coble	Local Government

MINUTES

HOUSE COMMITTEE ON FINANCE

THURSDAY, JUNE 25, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Thursday, June 25, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Rep. Dickson called the meeting to order and introduced the Pages.

HB-1529 HORSE PROMOTION ASSESSMENT

This bill had been discussed the previous day. Rep. Nichols sent forth an amendment, read and urged adoption. Rep. Hightower asked about the newspaper circulation portion of this amendment. Rep. Brown responded. Ms. Margie Rhodes, President, NC Horse Council, was asked by Rep. Brown to address members. She advised they had no opposition to the amendment. Rep. Brawley and Rep. Buchanan commented on advertising for a referendum. Rep. Capps had comments and additional suggestions for notifying individuals. Rep. Nichols advised he would agree to a perfecting amendment for more advertising exposure. Rep. Brown also agreed. Rep. Hightower offered a perfecting amendment. Ms. Martha Walston, Fiscal Research, explained how the perfecting amendment would read. Discussion continued with more suggestions for language and Ms. Walston continued to work with members for perfecting language. Chairman Dickson announced this would be displaced until language could be perfected.

SB-649 - LOBBYIST PENALTIES

Sen. Miller explained his bill. Rep. Beall moved for a favorable report. Ms. Elaine Marshall, Secretary of State, addressed members in support of this bill. Rep. Brawley and Rep. McComas questioned Sec. Marshall about excusable causes for filing late. She and Sen. Miller responded to their inquiries. Rep. Arnold questioned late fees. Sen. Miller responded again. Ms. Linda Millsap, Fiscal Research Division, explained her state comparison chart. Rep. Eddins questioned not having a stronger late penalty. He feels it should be studied in the future to increase the fees. Rep. Luebke asked about fees for the lobbyist and the principal. Ms. Marshall explained. Rep. Gray questioned constitutionality. Rep. Russell made comments and suggestions for an amendment. Chairman Dickson announced this would be sent to a sub-sub-

committee and presented to members again on Thursday, July 2, 1998. Members being, Reps. Eddins, Chairman, Russell, McComas and Hackney.

HB-1529 HORSE PROMOTION ASSESSMENT

Discussion continued. Rep. Nichols withdrew his previous amendment and offered another one. He explained and Ms. Walston offered additional explanation. Rep. Brown supports this amendment. The vote was taken and the amendment was adopted. Rep. Hightower questioned Ms. Rhodes about the voting process and she replied. Rep. Buchanan moved for a favorable report, unfavorable to the original bill. Mr. Tom Grubb, a private horse owner was recognized to speak to members. He provided members a handout (copy attached) and spoke against the bill. Rep. Brown responded to his comments. Rep. Brawley sent forth an amendment, explained and urged adoption. Ms. Martha Harris, Bill Drafting Division, gave a further explanation of the Brawley amendment. Rep. Brown opposed the amendment. Rep. Brawley spoke again on his amendment. Rep. Starnes spoke against the amendment. Ms. Rhodes spoke on the amendment. Rep. Miller spoke. Ms. Walston explained the Brawley amendment again.

Chairman Dickson announced the members to serve on the sub-sub-committee for the Lobbyist Penalty-SB-649 bill again.

Time expired and the meeting adjourned at 9:30.

W Dickson
Rep. Dickson, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

THURSDAY, JUNE 25, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

BILLS FOR DISCUSSION:

HB- 1326 - Update IRC Ref/Conform Gift Tax	Rep. Gray
HB-1529 - Horse Promotion Assessment	Rep. Brown
SB- 649 - Lobbyist Penalty	Sen. Miller

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1326*

Short Title: Update IRC Reference/Conform Gift Tax. (Public)

Sponsors: Representatives Gray, C. Wilson (Cosponsors), Brawley, Cansler, Capps, Hill, Neely, Ramsey; Hurley, Starnes, and Hill.

Referred to: Finance.

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997,~~ June 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1326:
Update IRC Reference/Conform Gift Tax

TO: House Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: June 22, 1998
SPONSOR: Representative Gray

House Bill 1326, recommended by the Revenue Laws Study Committee, makes two changes to simplify the tax law by conforming to federal tax provisions:

1. It rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1997, to June 1, 1998.
2. It conforms to federal gift tax treatment of qualified tuition programs.

Update Code Reference. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State tax law previously tracked federal law. Congress made numerous, significant changes to the Code last year that will affect federal taxable income. Because the State corporate and individual income tax is based upon federal taxable income, these changes, if adopted, will affect State policies and revenues. The fiscal note and attachments list and summarize the significant changes made by the federal Taxpayer Relief Act of 1997.[1]

One of the federal tax changes enacted last year was an income tax exemption for the annual earnings on amounts contributed to qualified tuition programs, such as North Carolina's Parental Savings Trust Fund, for the future payment of room or board at an institution of higher education. North Carolina law has a provision exempting these earnings to the extent they are taxed under federal law. Because they are no longer taxed under federal law, Section 2 of the bill repeals the North Carolina exemption. Section 3 amends a related North Carolina provision to clarify that it exempts distributions from tax only if they are used for qualified higher education expenses.

House Bill 1326 provides that the federal tax law changes that could increase a taxpayer's North Carolina taxable income for the 1997 tax year will not

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[1] Several of these changes had technical problems, which Congress has proposed to correct in H.R. 2676, the IRS overhaul bill which includes Tax Technical Corrections Act of 1997. The technical corrections were expected to be enacted by June 1, 1998, which is why SB 1227 references that date, but HR 2676 is in conference in Congress and is not expected to become law until sometime in July.

become effective until January 1, 1998. Under Article 1, Section 16 of the North Carolina Constitution, the legislature cannot pass a law that will increase a tax retroactively. There are a number of provisions in the federal Taxpayer Relief Act of 1997 that could increase taxable income for the 1997 tax year. Because the Code Update could not be acted upon until the 1998 Session of the General Assembly, these changes had to be given a delayed effective date.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this one. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law from year to year, the State may not want to adopt automatically all federal changes. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Section 2(1) of Article V of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

The Revenue Laws Study Committee explored the possibility of legislation that would automatically adopt federal changes to the Code each year, with legislative review and approval required in the succeeding legislative session. It was hoped that this approach would avoid the practical difficulties that occur when Code changes go into effect many months before the General Assembly has a chance to pass legislation adopting the changes. The Attorney General's Office reviewed the relevant case law in this State and other states before concluding that this approach would be unlikely to withstand a constitutional challenge.

Qualified Tuition Plan Gift Tax. Section 4 of House Bill 1326 adopts for North Carolina gift tax purposes the provisions of federal law listed below.

Conforming to federal law will relieve taxpayers from unexpected gift tax liability and will simplify tax compliance and administration.

1. A distribution from a qualified tuition program is not a taxable gift, unless a new beneficiary, who is a generation below the original beneficiary, is named to the account or receives the account in a rollover.
2. A contribution to a qualified tuition program is a gift to the designated beneficiary, but not a gift of a future interest. If the contribution were considered a gift of a future interest, a gift tax return would have to be filed even if the amount were under the $10,000 annual exclusion amount.
3. A contribution to a qualified tuition program is not a direct payment of tuition. If it were, it would be exempt from gift tax.
4. If a contribution exceeds the $10,000 annual gift tax exclusion amount, the donor may elect to avoid gift tax by treating the contribution as if it had been made over a five-year period. For example, a $25,000 contribution would not be taxable because it would be considered a gift of $5,000 a year over five years and thus would be below the $10,000 annual exclusion amount.

These provisions would apply to any qualified state tuition program under section 529 of the Internal Revenue Code. North Carolina has such a program, known as the Parental Savings Trust Fund. This Fund is part of the State Education Assistance Authority. The Fund is authorized by G.S. 116-209.25, which the General Assembly enacted in 1996. A person can contribute amounts into the Parental Savings Trust Fund for a child who is less than 16 years old. The amount contributed in the account, along with its interest and investment earnings, can be used to pay the expenses of the beneficiary at any accredited public or private college or community college. Either the child or the person making the contributions must be a resident of this State. The Education Assistance Authority opened the Parental Savings Trust Fund in early June, 1998.

Section 529 of the Code excludes the amounts earned on contributions to a qualified state tuition program from federal income tax and, therefore, from North Carolina tax as well. Under federal law, the earnings are exempt if the contributions are for the payment of qualified higher education expenses: tuition, room and board, fees, books, supplies, and equipment. Also under federal law, the amount distributed to a beneficiary of the Parental Savings Trust Fund for qualified higher education expenses is taxable to the extent it exceeds the amount contributed. Thus, under federal law, the tax on the investment earnings is simply deferred until a distribution is made, at which time the earnings are taxable to the beneficiary rather than the contributor. Under North Carolina law, however, the entire distribution is not taxable if it is used for qualified higher

education expenses. Under both federal and North Carolina law, earnings distributed for purposes other than qualified higher education expenses are taxable and are also subject to a penalty imposed by the state operating the program.

1997 Federal Tax Law Changes

General

The federal Taxpayer Relief Act of 1997 creates 285 new sections in the Internal Revenue Code and amends 824 existing sections. Errors in the act are expected to be corrected in 1998 in the federal Tax Technical Correction Act. The following list summarizes some of the significant provisions of the 1997 legislation.

Affects N.C. Individual Income Tax Only

1. Allows exclusion of $250,000 ($500,000 for joint filers) of capital gain from **sales of residence** occupied by taxpayer as principal residence for two of previous five years. Former rules on rollover and former one-time exclusion are repealed. Effective for sales after 5/6/97. This is a tax increase for those who have more than $250,000/$500,000 in gain, so to that extent it cannot be retroactive. (§ 121)
2. Expands business expense deduction for percentage of **self-employed individuals' health insurance**: effective in 2000, the percentage is increased to 50%, then phased up reaching 100% in 2007. (§ 16(a)(1)(B))
3. Establishes **Roth IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible contributions of up to $2,000 of compensation (limited for those with adjusted gross income above a certain amount). Distributions tax free if contributions made more than five years ago and one of the following applies: (i) taxpayer is over 59 ½ or is dead, (ii) distribution made because of disability, (iii) distribution is for qualifying first-time homebuyer expenses. Existing IRA may be rolled over to Roth IRA, subjecting rolled over amount to tax. If the IRA is rolled over to a Roth IRA in 1998, the tax due may be spread over four years. (§ 408(a))
4. Expands **existing IRAs** by increasing income limits and allowing IRA for spouse of disqualified active participant, effective for taxable years beginning on or after 1/1/98. (§219(g))
5. Establishes **Education IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible cash contributions of up to $500 a year per child under 18 (contributions limited for those with adjusted gross income above a certain amount). Annual earnings of IRA are tax-exempt and distributions are exempt to the extent spent on qualified higher education expenses. (§ 530)
6. Expands **Prepaid Tuition Programs** to include room and board as qualifying expenses, effective retroactively to August 21, 1996. N.C. already exempts these expenses. The act also expands definitions of eligible educational institution and family member, effective 1/1/98 (§ 529(c), (e)).
7. Reenacts exclusion for up to $5,250 of **employer-provided educational assistance**, effective for tax years beginning on or after 1/1/97 and for courses beginning before 6/1/2000. Does not apply to graduate level courses. (§127(d))
8. Allows above the line deduction for up to $1,000 a year of **interest paid on qualified higher education loans**, effective for interest due and paid on or after 1/1/98. The $1,000 annual limit is phased up by $500 a year until it reaches

$2,500 for 2001 and thereafter. Limited to five years of payments, and further limited for taxpayers with AGI above a certain amount. (§ 221)

9. Restricts **penalty for underpayment of estimated income tax**, so that it does not apply if total tax liability less pre-payments is less than $1,000. (N.C. piggybacks this because 105-163.15(f) references section 6654(e) of the Code.) Effective for tax years beginning on or after 1/1/98
10. Makes a small increase in **standard deduction** of individuals who can be claimed as a dependent by another (indexing not adopted), effective for tax years beginning on or after 1/1/98
11. Changes **net operating loss carryback and forward** periods from back 3 years and forward 15 years to back 2 years and forward 20 years, except for individual casualty losses and for farm and small business losses in a disaster area. Effective for tax years beginning on or after August 6, 1997. (Note, we cannot make this effective until tax years beginning on or after 1/1/98, because it is a tax increase.) Although the federal change affects both corporate and individual income tax, in NC corporate does not piggyback net operating loss treatment, so there is no effect on NC corporate income taxes.
12. Increases **charitable mileage rate** from 12¢ to 14¢, effective for tax years beginning on or after 1/1/98
13. Extends expired deduction for fair market value of **stock contributed to private foundation**, effective 5/31/97 (date of expiration) (§ 170(e)(5))
14. Expands rules governing when a **home office** qualifies as the principal place of business, effective for tax years beginning on or after 1/1/99. Note, however, that use of part of residence as home office may restrict availability of capital gain exclusion for residence.
15. Provides that capital gain from sale of certain **qualified small business stock** is not recognized to the extent the proceeds are rolled over into more qualified small business stock within 60 days, effective for sales on or after August 1, 1997.
16. Expands maximum amount of **self-employed 401(k)** contributions that may be made in certain circumstances, effective for taxable years beginning on or after 1/1/98. (§ 402, 408)
17. Provides that if an employee stock ownership plan **(ESOP)** is a shareholder in an S corporation, items of income or loss of the S corporation will not be treated as unrelated business taxable income, contrary to former law.
18. Changes tax treatment of **rural mail carriers' reimbursed mileage**, effective for tax years beginning on or after 1/1/98
19. Expands deferment of **gain from sale of livestock due to drought**, to include flood or other weather-related conditions. Effective for sales and exchanges on or after 1/1/97. (§ 451, 1033)
20. Expands **business meals/entertainment deduction for air transportation employees**, interstate truck and bus drivers, rail road employees, and merchant mariners. Increased from 50% to 55% effective for tax years beginning on or after 1/1/98. Thereafter, phased up 5% every two years to 80% in 2008.
21. Clarifies exclusion for value of **employer-provided parking**, effective for tax years beginning on or after 1/1/98.

22. Increases amount of foreign earned income that can be excluded by **US citizens residing in foreign countries**, effective for tax years beginning on or after 1/1/98, and phased up thereafter.
23. Retroactively excludes from income certain states' **disability payments to former police officers and fire fighters** in 1989, 1990, and 1991. Note: this provision applies only to certain states. If it applies to N.C., the statute of limitations will prevent refunds.
24. Excludes from income government survivor annuities for **slain public safety officers**, effective for tax years beginning on or after 1/1/97
25. Denies nonrecognition of gain when involuntarily converted property is replaced by property acquired from a related party, unless the taxpayer's aggregate gain is $100,000 or less, effective for involuntary conversions after 6/8/97. (§ 1033)
27. Changes from below the line to above the line the deduction for **State and local government official business expenses** relating to service as official, if official is compensated in whole or part on a fee basis. Effective retroactively beginning with 1987 tax year, but does not waive the three-year statute of limitations. (§62(a)(2)(c)).
28. Changes basis recovery method for pension plan payments, 1/1/98. (§72(d)).
29. Simplifies treatment of personal transactions in **foreign currency**, effective 1/1/98.
30. Increases pension full funding limit with 20-year amortization, effective 1/1/99.

Affects Partnerships (N.C. Individual Income Tax)

1. Treats as ordinary income gain attributable to inventory on sale or exchange of partnership interest and in certain partnership distributions, effective 8/5/97. (no impact)
2. Changes formula for allocation of basis among distributed assets of partnership, effective 8/5/97.
3. Extends from 5 to 7 years the period in which a partner may recognize "pre-contribution gain" with respect to contributed property when it is distributed to another partner, or when other property is distributed to the contributing partner, effective for contributions after 6/8/97.

Affects both N.C. Individual and Corporate Income Tax

1. Retroactively extends federal **R&D tax credit**, which had expired 6/1/97. N.C. law piggybacks this credit in G.S. 105-129.10.
2. Restricts types of property eligible for the more generous **income forecast method of depreciation,** effective for property placed in service on or after August 6, 1997. This method will now be allowed only for film, video tapes, sound recordings, copyrights, books, and patents.
3. Eliminates **short against the box** and similar transactions. A taxpayer must recognize gain upon entering into a constructive sale of any appreciated position in stock, etc. A constructive sale occurs if two offsetting positions are acquired in substantial identical property with the intent of reducing the taxpayer's risk

associated with the appreciated property. Gain recognized as if position sold at fair market value and repurchased on date of constructive sale. Effective 6/8/97, with transitional rules. (§ 1259).

4. Requires immediate accrual of interest or original issue discount on **pool of debt instruments** on which the principal can be paid without interest as of a certain date (e.g., credit card receivables) Effective for taxable years beginning on or after 8/5/97. (§1272)
5. Allows expensing of certain environmental remediation costs (**brownfields**) that would otherwise be chargeable to capital account. Effective for expenditures after 8/5/97 and before 2001. (§ 198)
8. Allows **inventory adjustment for estimated shrinkage** if business (1) usually makes a periodic physical count and (2) will later revise the adjustment for discrepancy between estimated shrinkage and actual shrinkage. Effective for tax years ending after 8/5/97. (§471)
9. If taxpayer enters into **short sale of property that becomes substantially worthless**, gain is recognized as if short sale closed when property became worthless. §1233(h). In addition, extends capital treatment of gains and losses under §1234A to interests in real property and nonactively traded personal property.
10. Includes income from **notional principal contracts and stock lending transactions** under Subpart F in gross income of U.S. shareholders, effective 8/5/97. (§ 951)
11. Further restricts like-kind exchanges involving foreign personal property, effective 6/8/97. (§ 1031).
12. Limits treaty benefits for payments to hybrid entities, effective 8/5/97. (§ 894).
13. Creates exception from U.S. property definition under Subpart F for certain securities positions, effective 1/1/98.
14. Exempts active financing income from Subpart F, effective during 1998 only.
15. Modifies look back method for long term contracts, effective 8/5/97.

Affects N.C. Corporate Income Tax Only

1. Recognizes gain when taxpayer exchanges property for certain preferred stock formerly not treated as "**boot**". Sections 351, 354, 355, 356, and 1036 of the Code. Effective transactions after 6/8/97.
2. Certain **corporate contributions of computer** software and equipment to schools qualify for charitable deduction in excess of otherwise applicable limit (basis of the donated property), effective for taxable years beginning on or after 1/1/98 and before 1/1/2001.
3. Repeals income deferral formerly allowed when **family farms** required to change from cash method to accrual method because gross receipts exceed $25 million. Effective for taxable years beginning on or after 7/1/96, with transitional rules.
4. Allows **Subchapter S subsidiaries** (allowed by Small Business Job Protection Act of 1996) to be treated in certain instances as separate corporations for the

purpose of applying Code provisions that benefit a certain type of entity (e.g., banks), that the subsidiary is but the parent is not. Effective 1/1/97

5. Clarifies that **software qualifies as export property** eligible for foreign sales corporation benefits, effective 1/1/98. Piggybacked by 105-130.5(a)(15)
6. Repeals deduction for premiums paid on life insurance policy or annuity in which taxpayer had an interest. Repeals deduction for **interest paid to incur life insurance coverage** where taxpayer is beneficiary and restricts deduction for taxpayer's interest expense allocable to certain cash surrender values. Also, provides pro rata disallowance of interest expense attributable to life insurance on individuals who are not officers, employees, or former employees. Effective 6/8/97.
7. Requires recognition of gain in year of extraordinary dividend if the nontaxed portion of the dividend exceeds the stock basis, and other changes. Depending on the type of extraordinary dividend, new rules effective for distributions after 5/3/95 or 9/13/95, with transition rules. .
8. Repeals law allowing manufacturers to use installment method to report income from sales to their dealers, effective for taxable years beginning on or after 8/6/98.
9. Expands circumstances in which gain is recognized upon acquisition or distribution of stock of the controlled corporation or distributing corporation, effective for transactions occurring after April 16, 1997. This change substantially restricts the availability of tax-free spinoffs. Also, effective for transfers after 6/8/97, gain recognition on transfers to investment companies expanded by expanding definition of investment company.
10. Denies **interest deduction on convertible debt** and similar debt, effective for instruments issued on or after 6/8/97. (§163(l))
11. Allows deferral of gain on sales of stock of certain corporations engaged in refining or processing agricultural products to farmers' cooperatives engaged in marketing agricultural products, effective 1/1/98. .
12. Modifies control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations, effective 1/1/99.
13. Repeals 30% gross income limitation for regulated investment companies, effective 8/5/97.

Affects Other NC Taxes

1. Extends **generation-skipping transfer tax** exemption to transfers to grandnieces and nephews where parent of transferee is deceased and transferor has no living lineal descendants at time of transfer, effective 1/1/98. (§ 2651, 2612) (We piggyback in G.S. 105-7.1.)

No Effect on N.C.

1. Allows $500 **child tax credit** ($400 in 1998). Phased out if AGI above $110,000 joint or $75,000 single/head of household

2. **Allows Education tax credits.** (1) Hope credit for portion of qualified undergraduate education tuition and fees for two years, phased out for taxpayers with AGI over certain amounts. Effective 1/1/98. (2) Lifetime learning credit for 20% of qualified undergraduate or graduate tuition, subject to cap, phased out for taxpayers with AGI over certain amounts. (§25A, 6050S)
3. **Lowers individual tax rate on capital gains**. Rate reduced from 28% to 20%. For taxpayers in 15% bracket, it is 10%. Holding period for LTCG expanded from one year to 18 months.
4. **Work opportunity tax credit** extended and expanded. New welfare to work tax credit for part of employers' wages paid to AFDC recipients, effective 1/1/98. (§ 51A)
5. Allows penalty-free (but not tax free) withdrawals from IRAs for qualified higher education expenses and first time home purchase.
6. Three-year **income averaging for farmers**, effective for 1998, 1999, and 2000 tax years. (§1301)
7. Increases **estate and gift tax unified credit** to $625,000 in 1998, $650,000 in 1999, $675,000 in 2000-01, $700,000 in 2002-03, $850,000 in 2004, $950,000 in 2005, and $1 million in 2006+
8. Reduces estate tax for land subject to permanent conservation easement, effective 1/1/98.
9. Allows **estate tax exclusion for qualified family owned business**, effective 1/1/98. This is very complex and can be narrow in its application.
10. Alternative minimum tax repealed for small corporations.
11. Alternative minimum tax depreciation adjustment eliminated for property placed in service on or after 1/1/99.
12. Farmers may use installment method of accounting for purposes of alternative minimum tax.
13. Taxpayer who fraudulently claims **earned income tax credit** is ineligible thereafter for 10 years. Also, change in definition of AGI for purpose of phasing out the EITC, effective 1/1/98.
14. Changes safe harbor test applicable to upper income individuals for purposes of penalty for underpayment of estimated taxes. We do not piggyback this. (§6654)
15. Tightens holding period rules for corporate dividends received deduction.
16. Those offering tax shelters must register with the IRS.
17. Orphan drug tax credit made permanent.

Technical/Minor – Probably Tiny Impact if Any

1. Clarifies that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance, as long as the employer does not provide long term health insurance.
2. Recaptures all depreciation (not just excess over straight line) on § 1250 property (buildings).
3. Clarifies that medical savings account withdrawals must be for an individual who was eligible (not covered by low deductible health plan) in the month the expenses were incurred.

4. Estate and its beneficiary treated as related parties for purpose of disallowing loss deduction for sales of assets to related parties and disallowing capital gains treatment for sales of depreciable property to related parties. Effective for taxable years beginning after 8/5/97. (§ 267, 1239)
5. Luxury auto depreciation limits relaxed for clean-burning fuel vehicles and electric vehicles, effective for property placed in service between 8/5/97 and 1/1/05. (§280F).
6. Employer may deduct contributions to SIMPLE 401(k) with no 15% limit, effective for taxable years beginning on or after 1/1/97. (§404(a)(3)(A))
7. Securities traders and commodity traders and dealers may elect mark to market accounting rules (previously applied only to securities dealers), effective for taxable years beginning after 8/5/97
8. Exclude from corporate unrelated business income tax income from certain corporate sponsorship payments .
9. Change treatment of travel expenses of certain federal employees engaged in criminal investigations, effective 8/5/97.
10. Changes rule for closing partnership taxable year with respect to a deceased partner, effective 1/1/98.
11. Allows deduction for contributions by ministers to retirement plans, effective 1/1/98.
12. Clarifies that **employer-provided employee meals** that are tax-free to the employee because they are for the convenience of the employer are fully deductible by employers and treated as de minimum fringe benefits effective for taxable years beginning on or after 1/1/97.
13. MedicarePlus Choice Medical Savings Accounts authorized as pilot program for individuals on Medicare, effective for taxable years beginning on or after 1/1/99. (§138, 220(b), 4973(d)).
14. Reduces **carryback period for general business credits** (such as R&D and low-income housing credits) from 3 years to 1 year, with carryforward period extended from 15 years to 20 years, effective for credits for which the taxpayer first becomes eligible in taxable years beginning on or after 1/1/98. Our R&D credit piggybacks the federal credit, and also some addbacks are allowed under our law if the taxpayer was disallowed a federal deduction for a credit for which we have no corresponding credit. (§ 39)
15. Repeals 30% gross income requirement for **real estate investment trusts**.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1326 (First Edition)
SHORT TITLE: Update IRC Reference/Conform Gift Tax
SPONSOR(S): Rep. Gray, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($ Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
GENERAL FUND	($13.13)	($12.03)	($14.85)	($20.73)	($34.77)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Section 4 (Qualified Tuition Programs) becomes effective for taxable years beginning on or after January 1, 1998. The remainder of the act is effective when it becomes law.

BILL SUMMARY: The act updates the reference to the Internal Revenue Code used in defining and determining certain state tax provisions (from January 1, 1997 to June 1, 1998) and conforms to federal gift tax treatment of contributions to qualified tuition programs.

BACKGROUND: Each year the General Assembly changes the reference date in the definition of the Internal Revenue Code used in the state individual and corporate income tax statutes. Congress made hundreds of changes in the Code with the passage of the Taxpayer Relief Act of 1997. These changes were reviewed by the Revenue Laws Study Committee and were recommended to the 1998 General Assembly with a few exceptions. Those tax law changes that affect the 1997 tax year cannot be adopted by North Carolina until 1998, because the state constitution prohibits enacting a retroactive tax increase.

ASSUMPTIONS AND METHODOLOGY: North Carolina estimates on updating the Internal Revenue Code reference are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is North Carolina's actual tax collections divided by national tax collections. (Individual = .723% and corporate = .542%.) The charts on the following pages show the fiscal impact of the major federal tax changes on the state's General Fund.

As for the gift tax change on qualified tuition programs, there should be little or no revenue loss to the state. The newly created College Vision Fund, administered by the State Education

Assistance Authority, is designed for middle income taxpayers who save an average of $125 a month for their children's college education. While gifts exceeding $10,000 may be accepted by the fund, such contributions are not the norm. Those with the means to give more than $10,000 per year will probably invest in college trust funds bearing interest greater than the interest paid by the State Treasurer on the investments in the College Vision Fund.

INTERNAL REVENUE CODE UPDATE

STATE IMPACT

	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Individual Income Tax Only						
Exclude capital gain from sale of residence	5/6/97	-3.62	-3.62	-3.62	-4.34	-4.34
Expand deduction for self-employed individuals' health insurance	2000	-	-0.28	-0.87	-1.62	-4.37
Establish Roth IRAs/Expand existing IRAs	1/1/98	-2.49	0.62	-2.50	-6.22	-13.23
Establish education IRAs	1/1/98	-4.66	-6.59	-7.66	-8.14	-10.47
Add room and board as qualifying expenses for Prepaid Tuition Programs	8/21/96	No impact - NC already exempts these expenses				
Reenact employer-provided educational assistance	1/1/97	-2.67	-1.81	-	-	-
Allow deduction of interest paid on qualified higher education loans	1/1/98	-0.50	-0.88	-1.47	-2.00	-2.23
Restrict penalty for underpayment of estimated income tax	12/31/97	-0.12	-0.13	-0.14	-0.14	-0.15
Increase standard deduction for individuals claimed as dependent by another	1/1/98	-0.27	-0.25	-0.25	-0.25	-0.25
Change net operating loss carryback and forward periods	1/1/98	0.22	0.26	0.19	0.13	0.10
Increase charitable mileage rate from 12 cents to 14 cents	1/1/98	-0.40	-0.42	-0.44	-0.46	-0.49
Extend deduction for FMV of stock contributed to private foundation	6/1/97	-0.07	-0.03	-	-	-
Expand rules on home office as principal place of business	1/1/99	-0.86	-1.76	-1.83	-1.90	-1.98
Exclude capital gain from sale of qualified small business stock	8/1/97	-0.36	-0.36	-0.36	-0.36	-0.36
Increase maximum amount of self-employed 401(k) contributions	1/1/98	No estimate available				
Modify tax treatment of Employee Stock Ownership Plans (ESOP) in S corporations	12/31/97	-0.17	-0.25	-0.30	-0.32	-0.33
Change tax treatment of rural mail carriers' reimbursed mileage	1/1/98	-0.01	-0.01	-0.01	-0.01	-0.01
Defer gain from sale of livestock due to drought, flood or other weather related event	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Expand business meals/entertainment deduction for air transportation employees, truck drivers, railroad employees, and merchant marines	1/1/98	-0.12	-0.20	-0.27	-0.35	-0.45

Internal Revenue Code Update (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Individual Income Tax Only						
Clarify exclusion of the value of employer-provided parking	1/1/98	0.06	0.08	0.09	0.09	0.09
Increase exclusion of income earned by US citizens residing in foreign countries		-0.22	-0.36	-0.48	-0.59	-0.70
Exclude from income the disability payments to former police officers and fire fighters retroactive to 1989, 1990, and 1991		-	-	-	-	-
Exclude from income government survivor annuities to slain public safety officers	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Deny nonrecognition of gain of involuntarily converted property	6/8/97	0.03	0.04	0.06	0.08	0.09
Provide an above the line deduction for state and local officials' expenses	1/1/87	-0.03	-0.03	-0.03	-0.04	-0.04
Change basis recovery method for pension plan payments modified	12/31/97	0.02	0.04	0.07	0.08	0.11
Simplify treatment of personal transactions in foreign currency	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Increase full funding limit with 20 year amortization for pensions	12/31/98	-0.03	-0.09	-0.10	-0.13	-0.14
Affects Partnerships (Individual Income Tax)						
Classify sale or exchange of inventory in partnership as ordinary income	8/5/97	No impact - NC already taxes as ordinary income				
Change formula for allocation of basis among distributed assets of partnership	8/5/97	0.38	0.40	0.41	0.43	0.44
Extend period from 5 to 7 years for recognition of precontribution gains	6/8/97	-	-	-	0.01	0.07
Affects both Individual and Corporate Income Tax						
Extend R&D tax credit retroactive to 6/1/97	6/1/97	Costs included in the Bill Lee act				
Restrict income forecast method of depreciation	8/6/97	0.30	0.45	0.56	0.27	0.20
Eliminate short against the box transaction for stock	6/8/97	0.87	0.49	0.53	0.57	0.61
Require immediate accrual of interest on pool of debt instruments	8/5/97	1.99	2.59	2.31	2.05	0.72
Allow expensing of certain environmental remediation costs for brownfields	8/5/97	-0.95	-1.19	-0.46	0.00	0.01
Allow inventory adjustment for estimated shrinkage	8/5/97	-0.15	-0.17	-0.18	-0.20	-0.21
Change gain recognition rules under sections 1233 and 1234A of the Internal Revenue Code	8/5/97	0.20	0.18	0.18	0.18	0.18

Internal Revenue Code Update (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Both Individual and Corporate License Tax						
Include income from notional principal contracts and stock lending transactions in gross income of U.S. shareholders	8/5/97	0.14	0.15	0.15	0.15	0.15
Restrict like-kind exchanges involving foreign personal property	6/8/97	0.06	0.08	0.09	0.11	0.12
Limit treaty benefits for payments to hybrid entities	8/5/97	0.01	0.01	0.01	0.01	0.01
Exempt certain securities positions from U.S. property definition under subpart F	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Exempt active financing income from subpart F	1998	-0.49	-0.02	0.00	0.00	0.00
Modify look-back method for long term contracts	8/5/97	-0.01	-0.02	-0.03	-0.03	-0.03
Affects Corporate Income Tax Only						
Recognize gain from exchange of property for preferred stock treated as boot	6/8/97	0.20	0.21	0.22	0.23	0.05
Expand charitable deduction for corporate contributions of computer software and equipment	1/1/98	-0.26	-0.42	-0.27	-0.03	-0.01
Repeal income deferral when farms change from cash method to accrual method	7/1/96	0.18	0.19	0.20	0.20	0.21
Allow Subchapter S subsidiaries to be treated as separate corporations	1/1/97	No estimate available				
Clarify that software qualifies as export property	1/1/98	-0.23	-0.79	-0.94	-0.98	-1.04
Restrict corporate deductions relating to life insurance	8/6/98	0.29	0.50	0.76	1.05	1.34
Require recognition of gain from extraordinary dividend and other changes	9/13/95	-0.50	-0.29	-0.05	0.24	0.42
Repeal law allowing manufacturers to use installment method to report sales to their dealers	8/6/98	0.24	0.53	0.57	0.57	0.35
Require gain recognition on certain distributions of controlled corporation stock and change tax treatment of redemptions involving related corporations	6/8/97	1.37	1.20	1.04	0.88	0.73
Deny interest deduction on convertible debt	6/8/97	0.09	0.16	0.23	0.30	0.34
Defer gain allowed on sales of stock of certain corporations engaged in refining or processing agricultural products to farmer cooperatives engaged in marketing agricultural products	12/31/97	-0.37	-0.03	-0.03	-0.02	-0.02
Modify control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations	12/31/98	0.00	0.00	0.02	0.03	0.03
Repeal 30% gross income limitation for regulated investment companies	8/5/97	-0.12	-0.15	-0.18	-0.21	-0.24

Internal Revenue Code Update (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affect Other NC Taxes						
Extend generation-skipping transfer tax exemption to grandnieces and grand nephews	1/1/98	-0.03	-0.03	-0.03	-0.03	-0.03
Total - IRC Update		-13.13	-12.03	-14.85	-20.73	-34.77
Gift Tax						
Treat contributions in excess of $10,000 to state pre-paid tuition plans as being made ratably over a five year period	1/1/98	Negligible revenue effect				
Technical/Minor Impact						
Clarify that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance		No estimate available				
Recapture all depreciation on section 1250 property		No estimate available				
Clarify that medical savings account withdrawals are for individual who was eligible in the month the expenses were incurred		No estimate available				
Treat estate and its beneficiaries as related parties for purpose of disallowing loss deduction for sales of assets	8/5/97	Negligible revenue effect				
Relax luxury auto depreciation limits for clean burning fuel vehicles and electric vehicles	8/5/97	-0.01	0.00	0.00	0.00	0.00
Allow employer deduction for contributions to SIMPLE 401(k) with no 15% cap	1/1/97					
Allow securities traders and commodity traders and dealers to elect mark to market accounting rules	8/5/97	No estimate available				
Exclude from unrelated business tax income certain corporate sponsorship payments	12/31/97	Negligible revenue effect				
Change treatment of travel expenses of certain federal employees engaged in criminal investigations	8/6/97	No revenue impact				
Close partnership taxable year with respect to deceased partner	12/31/97	No revenue impact				
Deduct contributions made by ministers to retirement plans	12/31/97	Negligible revenue effect				
Clarify tax-free employer-provided employee meals	1/1/97	No revenue impact				
Authorize MedicarePlus Choice Medical Savings Accounts pilot program	1/1/99	No estimate available				

Internal Revenue Code Update (Continued)	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Reduce carryback period for general business credits, but increase carry forward	1/1/98	Negligible revenue effect				
Repeal 30% gross income requirement for real estate investment trusts	8/5/97	Negligible revenue effect				

NOTES:

1) North Carolina estimates are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is N.C. actual tax collections divided by national tax collections. (Individual = .723% Corporate = .542%)

2) The North Carolina constitution prohibits enacting a retroactive tax increase, so this bill cannot adopt federal revenue increasing items for the 1997 tax year. This chart assumes that half of the revenue gained from tax increases in 1997 will be received by the Department in Tax Year 1998.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington

DATE: June 8, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1529
Committee Substitute Favorable 6/4/98

Short Title: Horse Promotion Assessment. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A HORSE PROMOTION ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 69.

"Horse Industry Promotion Act.

"**§ 106-820. Title.**

This Article may be cited as the Horse Industry Promotion Act.

"**§ 106-821. Findings.**

The General Assembly finds that the horse industry makes an important contribution to the State's economy, and that it is appropriate for the State to provide a means for horse owners to voluntarily assess themselves in order to provide funds to promote the interests of the horse industry.

"**§ 106-822. Definitions.**

As used in this Article:

(1) 'Commercial horse feed' means any commercial feed, as defined in G.S. 106-284.33, labeled for equine use.

(2) 'Council' means the North Carolina Horse Council.

(3) 'Department' means the Department of Agriculture and Consumer Services.

(4) 'Equine' means a horse, pony, mule, donkey, or hinny.

(5) 'Horse owner' means a person who (i) is a North Carolina resident and (ii) owns or leases an equine or has a financial interest in equines or an equine operation.

"**§ 106-823. Referendum.**

(a) The Council may conduct a referendum among horse owners upon the question of whether an assessment shall be levied consistent with this Article.

(b) The Council shall determine all of the following:

(1) The amount of the proposed assessment, not to exceed two dollars ($2.00) per ton of commercial horse feed.

(2) The period for which the assessment shall be levied, not to exceed three years.

(3) The time and place of the referendum.

(4) Procedures for conducting the referendum and counting votes.

(5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot.

(d) All horse owners are eligible to vote in the referendum. Any questions concerning eligibility to vote shall be resolved by the board of directors of the Council.

"**§ 106-824. Majority vote required; collection of assessment.**

(a) The assessment shall not be collected unless a majority of the votes cast in the referendum is in favor of the assessment. If a majority of the votes cast in the referendum is in favor of the assessment, the Department shall notify all commercial horse feed manufacturers and distributors of the assessment. The assessment shall apply to all commercial horse feed subject to the provisions of G.S. 106-284.40(b), and the assessment shall be remitted to the Department with the inspection fee imposed by G.S. 106-284.40. The Department shall provide forms for reporting the assessment. Persons who purchase commercial horse feed on which the assessment has not been paid shall report these purchases and pay the assessment to the Department.

(b) The Council may bring an action to collect unpaid assessments against any horse owner, feed manufacturer, or distributor who fails to pay the assessment and, if successful, shall recover the cost of such action, including attorneys' fees.

"**§ 106-825. Use of funds; refunds.**

(a) The Department shall remit all funds collected under this Article to the Council at least quarterly. The Council shall use these funds to promote the interests of the horse industry and may use these funds for those administrative expenses that are reasonably necessary to carry out this function.

(b) Any person who purchases commercial horse feed upon which the assessment has been paid shall have the right to receive a refund of the assessment by making demand in writing to the Council within 30 days of purchase of the feed. This demand shall be accompanied by proof of purchase satisfactory to the Council."

Section 2. G.S. 106-550 reads as rewritten:

"**§ 106-550. Policy as to promotion of use of, and markets for, farm products.**

It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, sweet potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the agricultural products of tobacco, strawberries, strawberry plants, ~~or~~ porcine animals, or horses, with respect to which separate provisions have been made."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1529 (Second Edition)

SHORT TITLE: Horse Promotion Assessment

SPONSOR(S): Rep. Brown

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Horse Council Funds	$200,000	$200,000	$200,000		
EXPENDITURES	(to be determined by the Horse Council)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Agriculture and Consumer Services

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: The bill authorizes the North Carolina Horse Council to hold a referendum among horse owners on whether to levy a fee of up to $2 a ton on commercial horse feed for the purpose of promoting the horse industry. If approved by a majority of the horse owners, the Department of Agriculture and Consumer Services will collect the fee from commercial feed dealers and distributors and remit the funds to the Horse Council on a quarterly basis. The assessment will be levied for no more than three years. Horse owners have a right to request a refund of the fee from the Horse Council if they do not wish to participate in the promotion effort.

ASSUMPTIONS AND METHODOLOGY: In the 1996 North Carolina Equine Survey, the Department of Agriculture and Consumer Services identified 33,000 equine owners and 132,000 head of equine in the state. The Department 's 1996 Feed Tonnage Report showed 97,279 tons of horse feed were purchased in the state. Horse feed sales grew 8.7% a year from 1993 to 1996, but the growth rate was only 4.4% from 1995 to 1996. Without data on the projected growth in the state's equine herd, it is impossible to predict what the future growth in feed sales will be. This

note assumes a flat 100,000 tons of horse feed are purchased each year during the three years that the assessment is in place. If the referendum is successful, this note assumes the Horse Council will assess $2 per ton beginning in FY 1998-99 for revenues of $200,000 per year.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington

DATE: June 20, 1998

EXPLANATION OF HOUSE BILL 1529 (2d Ed.):
Horse Promotion Assessment

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 23, 1998
SPONSOR: Representative Brown

House Bill 1529 provides for a referendum to allow horse owners to assess themselves through a levy on commercial horse feed, in order to provide funds to the North Carolina Horse Council. These funds will be used to promote interests in the horse industry and for administrative expenses reasonably necessary to carry out this promotion. The 2nd Edition differs from the introduced bill by adding definitions for "equine" and "horse owner". This 2nd Edition was given a favorable report in the House Committee on Agriculture. The act is effective when it become law.

House Bill 1529 authorizes the North Carolina Horse Council to conduct a referendum among horse owners to determine if the assessment should be levied. To take effect, the assessment must be approved by a majority of votes cast in the referendum. The amount of the assessment may not exceed $2 per ton of commercial horse feed and shall not extend for a period of more than 3 years. The Council is to determine the exact amount and period of the levy.

If the assessment is approved, the North Carolina Department of Agriculture and Consumer Services shall notify all commercial feed dealers and distributors of the assessment and shall provide forms for reporting the assessment. The assessment is to be remitted to the Department with the inspection feed imposed under the Commercial Feed Law, Article 31C of Chapter 106. Anyone who purchases commercial horse feed upon which the assessment has been paid may demand a refund of the assessment by writing the Horse Council within 30 days of buying the feed and providing proof of purchase.

The Department is to remit funds to the North Carolina Horse Council at least quarterly.

Similar promotion assessment acts have been enacted for flue-cured tobacco farmers, strawberry producers and pork producers,

Passed out by
Tom Grubb,

HORSE PROMOTION ASSESSMENT - IMPORTANT POINTS:

1. In excess of 99% of horses are used for pleasure and entertainment. The Horse Industry consists of for profit business which provide goods and services to the Private Horse Owners. The Private Horse Owners activities are strictly for pleasure and entertainment; not business. The N.C. Horse Council represents the Horse Industry.

2. Only approximately 1% or 500 individuals of the approximately 50,000 N.C. horse owners have voluntarily chosen to join the Horse Council.

3. Private Horse Owners are required to pay 6% Sales Tax on horse feed purchases. Certain portions of the Horse Industry when providing services to the end user are allowed to buy horse feed Sales Tax exempt and then resell the feed to the end user without collecting the Sales Tax from the end user. This exemption appears to be costing in excess of $1,000,000 annually in lost Sales Taxes. Thus, Private Horse Owners are carrying their share of the load.

4. The commodity group assessment method used to justify the $2.00 per ton assessment on Private Horse Owners is not appropriate in this situation. This is because Private Horse Owners, who make up the majority of horse owners, are NOT part of the Horse Industry or for profit horse business. The other commodity groups mentioned, such as the cattle producers, are made up of for profit businesses.

5. The amount the assessment will generate according to three different sources:
   a) Mr. Steve Mobley, N.C. Dept. of Ag. — 96,000 tons/year X $2/ton = $196,000 annually
   b) N.C. Horse Council — 220,000 horses X $1.80/horse = $396,000 annually
   c) Feed Industry — 300,000 tons/year X $2/ton = $600,000 annually (includes feed labeled for horses but sold to cattle producers and other nonhorse consumers)

   Once this money is turned over to the Horse Council, there is no oversight or control on how the money is spent.

6. Attachment 1 is a publication from the N.C. Horse Council about the Horse Industry Promotion bill. Items 1, 2, 3, and 5 are already being carried out by the N.C. Dept. of Agriculture, the Agriculture Extension Service, N.C. State University, and the N.C. State University School of Veterinary Medicine. Essentially all of these activities were being performed before the Horse Council appeared. Item 4 appears to be lobbying and other political activities on the state and national level.

7. The Refund Mechanism is designed to make seeking a refund difficult and cumbersome. The object being to discourage those who do NOT voluntarily support the Horse Council from seeking a refund of their money. Also, those horse owners who seek refunds will be deprived of the use of their money from the time of tax payment until the refund arrives and will not be compensated for the time and expense in obtaining a refund.

8. The referendum will be conducted and administered by the Horse Council which is to be the beneficiary of the tax. There will be no oversight of the Horse Council on this matter.

 Attachment 1

NORTH CAROLINA HORSE COUNCIL

F. Carlyle Teague, Executive Director
P.O. Box 12999 Raleigh, North Carolina 27605-2999 tel: 919/821-1030 fax: 919/828-9322

HB 1529 - HORSE INDUSTRY PROMOTION BILL

The goal of the Horse Industry Promotion Bill will be for the horse industry itself to annually contribute funds dedicated to the marketing, education and research of the horse industry of North Carolina through expansion of existing and development of new programs. This concept of a product assessment is the basic marketing and educational funding of many other livestock and agricultural commodity groups in North Carolina.

This money would be used to benefit the North Carolina horse industry:

1) for the production of marketing, informational and educational materials and programs;

2) to encourage development and growth of the horse industry through attraction of new owners, relocation of out-of-state horse operations and expansion of new and exisiting equine-related agribusiness;

3) to encourage research that would help the development of the horse industry;

4) to improve interaction with North Carolina governmental agencies and any national agencies deemed necessary for the improvement of the North Carolina horse industry;

5) and to enhance the general public's image and knowledge of the North Carolina horse industry.

THE SPECIFICS OF THE BILL

*** It would be an assessment of $2.00/per ton of any commercial feed labelled for horse use or horse supplements (a nickel per 50 # bag of horse feed). This would amount to approximately $1.80 per horse per year. This concept has the approval of the major horse feed companies, independent feed mill operators, horse organizations and the Department of Agriculture and Consumer Affairs of the state of North Carolina.

*** Once the Bill is passed by the NC Legislature, the assessment would need to have the approval of the North Carolina horse industry through a referendum.

*** Horse owners who buy feed; but do not wish to contribute, could receive a refund upon request from the NC Horse Council.

Support letters from the following are on file with our sponsor, Representative John Brown: Commissioner Jim Graham, Mule City Feeds, Southern States Cooperative, Inc. Purina Mills, Inc. Cooperative Council of North Carolina (June 6, 1998)

June 17, 1998

Representative George W. Miller Jr.
P.O. Box 2975
Durham, N. C. 27715-2975

Dear Representative Miller,

My husband and I own an animal feed and supply store in Durham as well as one in Fuquay Varina. We also manufacture our own brand of horse feed. I am writing to you concerning the Horse Promotion Act, a bill that is before the House Finance Committee. We have some concerns regarding this bill. This bill has been drafted and brought to you with little input from horse owners and feed distributors. We first learned of the bill two weeks ago and have not had a chance to adequately inform our customers about it. The customers we have informed have had no prior knowledge of the effort and have unanimously been opposed to the measure. Some of these customers are members of the N.C. Horse Council. Our major concern is we have found that the N.C. Horse Council, the beneficiary of this tax, has less than 600 members, which would represent about 1% of the horse owners in the state.

We also are concerned that cattle producers will have to bear a portion of this tax. For example we have one particular feed that would fall under the tax, for which approximately 25-30% of the total sales are to cattle producers. There is not a simple way to separate these customers out. This is not fair to the small cattle producers.

No matter how we try to rationalize the idea, horses are a hobby for the enjoyment of their owners. They are neither food or fiber, and the owners are as varied and diverse as the breeds of horses they own. Many horse organizations have been established and no single one can truly represent them all. Many horse owners are barely able to afford the costs associated with ownership. The way to ensure growth in the horse population is to increase disposable income. We believe that a new tax would merely result in a reduction of disposable income.

Please keep in mind, a recent ruling by the N.C. Dept of Revenue has resulted in a 6% sales tax for all feeds not used in production. This would increase the tax by an additional 1%.

I appreciate your attention to this, and I sincerely hope you will oppose this bill. It is not in the best interest of the horse owners or small retail feed businesses of this state.

Sincerely,

Susan Byrd Blalock

Susan Byrd Blalock
President
Triangle Farm and Home Inc.
Vice President
Triangle Feed and Supply Inc.

799 Fanning Bridge Rd
Fletcher, NC 28732

Fax Cover Sheet

DATE:	June 24, 1998	**TIME:**	11:47 PM
TO:	Rep. George Miller	**FAX:**	919-715-5815
FROM:	Doug Robertson	**PHONE & FAX:**	828-681-0328
RE:	Proposed Tax on Horse Feed		

Number of pages including cover sheet: 1

Message

I am writing you as a horse owner and a person involved in the feed business to address my concerns about the proposed horse feed tax which is currently being considered. I suspect that I am not alone in that I was not aware that such a tax is so close to being approved.

I sincerely hope that you will oppose this bill. If not, I am confident that before you support a tax that is going to affect such a large number of your constituents, you will want to consider the opinion of some of the tens of thousands of horse owners that are not involved in the N. C. Horse Council. Furthermore you may wish to address the concerns of the retail feed business owners' across our state who will be forced to collect a tax that will benefit a select few. I appreciate your attention to this matter and look forward to seeing that your decision supports your concern for the people which you represent.

Tom,

This is a copy of the fax I sent to Rep Carolyn Russell, David Miner & Miller. Thanks for you time & effort.

Doug Robertson

COKER FEED MILL, Inc.

1439 Hood Swamp Rd.
Goldsboro, NC 27534
Phone: (919) 778-3491
Toll Free: 1-800-332-6237
Fax: (919) 778-3501

To: Representative George W. Miller Jr.

Re: Horse Promotion Act

I am writing to you because I have several customers who are very concerned about the new "tax" on horse feed. It is my understanding that you have been told that the feed industry is supporting this bill. That is not necessarily true. I would like to know more about this proposal before I could support it. Will it benefit those that have to pay for it, or will it be just another tax that they don't want to pay for a service that they don't need or want?

Please proceed very cautiously on this bill.

Sincerely,

R. Brantley Coker, Pres.

Philip A. Blalock

From: Philip A. Blalock
Sent: Sunday, June 14, 1998 1:04 PM
To: 'Dave Dreyer'
Subject: Horse Promotion Act

Dear Mr Dreyer,

After our conversation on Thursday, June 11 I felt it was neccessary to respond with my concerns in writing. I would ask that this be placed on record and accompany any documentation concerning the bill in question.

As one of your largest customers I would like to formally request that you consider a letter of opposition to the passage of the Horse promotion act currently under consideration in the North Carolina legislature. I do not feel that this bill is in the best interest of the horse owners or the feed industry.

My objections are based on the following facts.

1) The bill is written to support an organization that represents less than 1% of the existing horse owners in the state. This would not be fair representation for the average horse owner.

2) The majority of the money is earmarked for establishing a highly paid executive director, a secretary and a lobbyist. This would effectively be a tax that would support very few people while setting up a Political Action Committee. I feel that Cargill could represent itself in that respect more efficiently and with a more direct message.

3) The bill is being "railroaded" through with no follow up to the parties that would be affected. A Department of Agriculture representative testified in a hearing of the House Agriculture Committee that this bill had the support of the feed industry when only a few of the feed representatives had been consulted and not all of them had had sufficient time to assess the impact and formulate a response. I think it was another Minneapolis businessman, Harvey Mackay, that said " When you don't trust the method you need to also question the motive."

4) The only feedback I have been able to derive from my customers in the short time given since the issue has risen is first a lack of knowledge of the bill followed by an overwhelming lack of support for the tax. This would contradict the testimony that the horse owners wanted such a tax.

5) The assessment would be unfair to many cattle producers whom buy sweet feed for their animals. There is no way to separate them out with this method.

6) The success of promotion assessments in the past offer little support to the argument that they would increase the numbers of horses and therefore the consumption of horse feed. I would offer examples of the beef checkoff which has had little effect on the decreasing numbers of cattle which are controlled more by macroeconomic factors. I find it hard to believe that a few people no matter how well paid could increase the horse population more effectively than an increase in disposable income which would come from a DECREASE in taxes. Horses after all are merely a hobby in the US which is in the feed industry's best interest since the consumption of high margin horse feeds would be adversely affected if they were raised for slaughter. Another example of assessments not working is in the [illegible]. The consumption of [illegible] has risen nationwide while the shipments of North Carolina [illegible] has declined due to quality in the varieties grown here relative to the those grown in other areas. This has occurred with the presense of an assessment specifically set aside for the promotion of North Carolina [illegible].

I find it disheartening and disturbing that you lack confidence in Nutrena's ability to promote itself and it's product so that you would consider supporting the establishment of a bureaucracy with substantial cost to you as a manufacturer. I would much rather see that money spent on outreach to the existing horse population so that we may gain some of the 75%+ of the owners that are currently buying feed from somewhere else.

I have not addressed all of my concerns with the bill as it written. I have chosen to question mainly the concerns of establishing such a tax. I have concern with the fairness of how the referendom would be handled as well as with the oversight of the money but they could be handled with changes in the bill.

I hope that it is not too late for a response to have an effect, due to the speed in which the bill has been pushed through committees. Thank you.

Sincerely,

Philip A. Blalock
President
Triangle Feed & Supply Inc

Philip A Blalock

Withdrawn by Sponsor

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1529

AMENDMENT NO. _____
(to be filled in by Principal Clerk)

H1529-ALA-002

Date _____ ,1998

Comm. Sub. [yes]
Amends Title []
Second Edition

Representative Nichols

moves to amend the bill on page 2, line 17, by rewriting the line to read:

"(d) All horse owners are eligible to vote in the referendum. The Council must publish notice of the referendum in newspapers having general circulation throughout the State and in any appropriate trade journal identified by the Council. Any questions".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

House Finance — June 25, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Crissy Parker	Bone & Associates.
VL McBride	NCDA
Bernard Allen	SOS
Mary Kelly	SOS
Tommy Herndon	Herndon Connelly
SAM JOHNSON	ATTY
Doug Miskew	IBM
Alice Garland	
Sandy Smith	WCSP
Paul Zigas	OSBM
Jim Gulley	NCPC
Elaine Marshall	SOS

VISITOR REGISTRATION SHEET

Horse Issues — June 25, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jim Fotheringham	NCAFT
Jim Brown	State Parks
Cynthia Moseley	NC Dept. of Commerce
BILL SCOGGIN	NC BAR ASSOC.
J. Carlyle Teague	NC Horse Council
Margie Rhodes	" " "
Glenn Petty	NC Dept. Agriculture
Don Robinson	NCSU-VRL
Tom Grubb	Citizen
Mike Carpenter	NCSG
Alan Miles	Bailey & Dixon LLP
Patti Stowell	DOR

VISITOR REGISTRATION SHEET

Name of Committee: House Finance

Date: June 25, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Pomeranz	DOR
Betty Dant	DOR
Keith Hartmann	DOR
Charles Hawks	DOR
Paul Stock	NC Bankers Assn
[illegible]	Moore & Van Allen
Doug Roy	NCDOT
Bill Graham	NC Home Council
Brenda Summers	NC Equity
Karen L. Moriarty	NC Citizen
Brenda Dougherty	Sprint
John Bourdish	Zeb Alley P.A.

VISITOR REGISTRATION SHEET

House Finance — June 25, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Tim Minton	NCHBA
Katherine Davis	Electricities of NC Inc
[illegible]	NC [illegible]
Jeff Allen	ZDAPA
Paul T. Quinn	Pres.
David Simmons	ZDA, PA
Jane Upchurch	CP&L
Barbi Beaver	NCCBT
Bob Cadle	NCDOR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 649
Finance Committee Substitute Adopted 5/20/97

Short Title: Lobbyist Penalty. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR LATE FILING OF REPORTS BY LOBBYIST AND PRINCIPAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 2. G.S. 120-47.7(d) reads as rewritten:

"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist's principal who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. This act becomes effective January 1, 1999.

EXPLANATION OF SENATE BILL 649 (2d Ed):
Lobbyist Penalty

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 24, 1998
SPONSOR: Senator Miller

Senate Bill 649 increases the penalty for late filing of lobbying expense reports by lobbyists and lobbyists' principals for reports filed more than 30 days late. The current law only requires an additional $10 late filing fee. The bill is a recommendation of the Secretary of State's office and passed the Senate during the Long Session. The bill has been given a favorable report by the House Committee on Ethics.

Section 1 of the bill amends the penalties applicable to lobbyists who fail to file their required lobbying expense reports on time. Under this section a lobbyist would be required to pay $10 for a report which is less than 30 days late. After 30 days, the penalty increases to $50 per day up to a maximum of $1,000. An appeal process to seek a waiver of the penalty is provided, where excusable neglect, unavoidable delay, or impossibility of performance can be shown as good cause justifying the delay. This appeal is made to the Secretary of State.

Section 2 amends the penalties applicable to lobbyist's principals who fail to file their required lobbying expense reports on time in the same manners as is being amended for lobbyists. A principal means the entity in whose behalf the lobbyist influences or attempts to influence legislative action.

Current law requires a lobbyist and a lobbyist's principal to file an expense report with the Secretary of State within 60 days after the last day of the regular session. The report must include all expenditures made between January 1 and the last day of the regular session. The report must also show the date of each expenditure, to whom paid, the name of any legislator benefitting from the expenditure and the amount of each expenditure made in connection with lobbying in the categories of transportation, lodging, entertainment, food, any item having a cash equivalent value of more than $25 and contributions made or promised. If more than 10 legislators benefitted or were invited to benefit from an expenditure, the lobbyist is only required to report the number of legislators or, with particularity, the basis for their selection.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 649

SHORT TITLE: Lobbyist Penalty

SPONSOR(S): Senator B. Miller

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	0	May result in a $175 - $3550 revenue increase			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State.

EFFECTIVE DATE: January 1, 1999.

BILL SUMMARY: This bill will increase the penalty for filing a late lobbying expense report with the Secretary of State's office. Currently there is a one time late fee of $10.00. The bill increases the late fee to $10.00 per day, up to 30 days. After thirty days, the daily fee increases to $50.00. The maximum total fine is $1000.00

ASSUMPTIONS AND METHODOLOGY: According to the Secretary of State's office, there were 610 lobbyists and 497 principals for the 1997 legislative session (1107 total). End of session reports were due to that office by October 27, 1997. 121 lobbyists and principals did not file their reports by that date. At this point, 95 of those delinquent lobbyists and principals have filed late reports and paid the associated fees for that session. Twenty-six lobbyists and principals filled a late report but did not file a late fee. As such, 11% of lobbyists and principals were late filers. The Secretary of State reports that reporting late fees created $950 in revenue.

During the 1996 session, North Carolina had 584 lobbyists and 636 principals (1220 total). Of these principals and lobbyists, 278 submitted late reports. As such, in 1996, approximately 22.8% of the lobbyists and principals were late reporters. Late reporting fee estimates are not available for the 1996 session.

North Carolina is one of only three states that link their reporting exclusively to the legislative calendar. One other state, West Virginia, links their reporting period to the legislative session and a series of annual dates. Of the states with a similar reporting calendar, one does not access a dollar penalty, and another addresses the issue only when the late reporting is considered "willful and intentional" requiring court action. Neither drew revenue from penalties in 1997. The third state, New Mexico, charges a penalty of $50 per day, to a maximum of $5000. New Mexico revenue data is not available.

Of our surrounding states, only Georgia does not have a penalty (see chart for explanation). The average total late fee collections from the two states that provided revenue information, South Carolina and Florida, is $4,275. In both states approximately 4% of lobbyists and principals were diligent in the 1997. Both have a progressive penalty system somewhat similar to the bill.

Assuming the 4% experience in Florida and South Carolina applied, under the bill North Carolina could expect approximately 45 individuals to be delinquent under the new system. Given the experience of South Carolina and Florida, these individuals would pay between $25 and $100 in fines, for a total potential revenue of $1125 to $4500. This would be a revenue increase of $175 to $3550 after each legislative session.

TECHNICAL CONSIDERATIONS: These estimates are only provided to give a revenue range, since they are based on limited survey information. Each state's experiences may be unique. Because the late fees are collected after the legislative session, no revenue is expected in FY 1998-9.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:
DATE: June 23, 1998

Survey of State Lobbyist and Principal Penalties for Late Reports

	Penalty	Grace Period	Initial Fee	Before 30 Days	After 30 Days	Maximum	Number Accessed	Total Revenue
Surrounding States								
South Carolina (802)	yes	10 days	$100	10/day	n/a	$600	35	$3,500
Virginia	yes	no	$50	50/day after 10	n/a	n/a	?	?
Tennessee	yes	5 days	$0	25/day	n/a	$750	?	?
Kentucky	yes	no	$0	100	n/a	$1,000	0	$0
Georgia*	no	n/a	$50	one time 25	n/a	$75	0	$0
Florida (5124)	yes	no	$0	50/day	n/a	n/a	206	$5,050
North Carolina (1107)	yes	no	$10	n/a	n/a	$10	121	$950
States With Similar Reporting Timelines								
New Mexico	yes	no	n/a	50/day	n/a	$5,000	?	?
South Dakota	no	n/a	n/a	n/a	n/a	n/a	n/a	n/a
West Virginia	willfully & intentional		n/a	n/a	n/a	n/a	n/a	n/a
* While the statutes impose the above fines, they are not enforced as a result of a court order.								
States with similar reporting timelines are those states whose filing deadline is after a legislative session.								

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, JUNE 24, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Wednesday, June 24, 1998, 8:30 a.m. in room 544-LOB. A silent roll was taken (roll list denotes members present).

Rep. Wilson called the meeting to order and introduced the Pages.

SB-1327 NO TAX ON GAS CITIES

Discussion continued for the Tuesday meeting. Rep. Berry's amendment (ARB-33) was modified and she explained her modified amendment. Rep. McComas sent forth a substitute amendment (ARB-30) and moved for consideration. This was to correct the language of Tuesday's amendment. He also sent forth a second amendment and Chairman Wilson asked him to explain his amendments. Ms. Cindy Avrette, Research Division, added additional explanation. Rep. Cunningham spoke in support of the McComas amendment. Rep. Dickson and Rep. Wilson asked follow-up questions of clarification of his amendment. Rep. McComas responded and advised that there was opposition to his amendment and would ask that those people be allowed to advise why they oppose. Rep. Dickson had concerns which Rep. Arnold addressed. Sen. Dalton also replied to concerns. Rep. Hunter asked Mr. Bill McAulay, Public Service Gas, his interpretation of the amendment and he responded. Ms. Avrette explained the difference in the Berry and McComas amendments again. Sen. Dalton urged support of the McComas amendment. Rep. Hunter made additional comments. Rep. Neely asked Department of Revenue which amendment they supported. Ms. Faires, Assistant Secretary, Department of Revenue supports the McComas amendment and explained why. Rep. Neely spoke again. Chairman Wilson asked Ms. Sharon Miller, Carolina Utilities Association for her opinion and she advised they would support the McComas amendment. Mr. Ed Leggett, Jasper Textiles, spoke on the amendments and offered suggestions to improve them. Rep. Berry spoke again in support of her amendment and questioned Rep. McComas about the rate increases in his amendment. Rep. McComas replied. Sen. Dalton responded to Rep. Berry's comments. Rep. Jarrell supports the McComas amendment because it would help one of her companies in her district. She then questioned Sen. Dalton how it would affect other companies. Sen. Dalton replied. Rep. Capps spoke in support of the Berry amendment. Sen. Dalton responded to his comments. Rep. Hightower spoke on both amendments. Rep. Rayfield offered a suggestion

for language to include that no increases would be passed to residential customers. Ms. Avrette addressed his suggestion. Rep. Berry urged defeat of the McComas amendment. The vote was taken on the McComas amendment and it was adopted.

Discussion began on the McComas second amendment (ARB-32). The bill sponsor supported the amendment. Ms. Linda Millsap, Fiscal Research Division, gave a fiscal explanation. Rep. Berry shared concerns. Rep. McComas spoke again and Ms. Avrette gave another explanation. Rep. Neely questioned staff about rate blocks and Ms. Avrette responded.

Rep. Baddour sent forth an amendment and explained. Rep. Gray requested the fiscal impact of this amendment. Ms. Avrette responded. Mr. Andy Romenet, League of Municipalities, addressed the amendment and urged support. Rep. Luebke questioned staff and Ms. Avrette responded. Rep. Womble supports the amendment. The vote was taken on the amendment was adopted.

Rep. Berry's amendment still needed attention and she spoke on it again. Rep. Neely urged defeat of the amendment. The vote was taken and failed.

Rep. Womble moved for a favorable report, unfavorable to the original bill. The vote was taken and passed.

HB-1529 HORSE PROMOTION ASSESSMENT

Rep. Brown explained the bill. Rep. Starnes moved for a favorable report. Rep. Womble asked for clarification. Ms. Martha Walston, Fiscal Research Division offered additional explanation. Rep. Nichols spoke and would like to offer and amendment.

Time expired and the meeting adjourned at 9:50 a.m.

Connie Wilson
Rep. C. Wilson, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, JUNE 24, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

BILLS FOR DISCUSSION:

HB-1529 - Horse Promotion Assesment	Rep. Brown
SB-649 - Lobbyiest Penalty	Sen. B. Miller
SB-1327 - No Tax on Gas Cities	Sen. Dalton

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1529
Committee Substitute Favorable 6/4/98

Short Title: Horse Promotion Assessment. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A HORSE PROMOTION ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 69.

"Horse Industry Promotion Act.

"**§ 106-820. Title.**

This Article may be cited as the Horse Industry Promotion Act.

"**§ 106-821. Findings.**

The General Assembly finds that the horse industry makes an important contribution to the State's economy, and that it is appropriate for the State to provide a means for horse owners to voluntarily assess themselves in order to provide funds to promote the interests of the horse industry.

"**§ 106-822. Definitions.**

As used in this Article:

(1) 'Commercial horse feed' means any commercial feed, as defined in G.S. 106-284.33, labeled for equine use.

(2) 'Council' means the North Carolina Horse Council.

(3) 'Department' means the Department of Agriculture and Consumer Services.

(4) 'Equine' means a horse, pony, mule, donkey, or hinny.

(5) 'Horse owner' means a person who (i) is a North Carolina resident and (ii) owns or leases an equine or has a financial interest in equines or an equine operation.

"**§ 106-823. Referendum.**

(a) The Council may conduct a referendum among horse owners upon the question of whether an assessment shall be levied consistent with this Article.

(b) The Council shall determine all of the following:

(1) The amount of the proposed assessment, not to exceed two dollars ($2.00) per ton of commercial horse feed.

(2) The period for which the assessment shall be levied, not to exceed three years.

(3) The time and place of the referendum.

(4) Procedures for conducting the referendum and counting votes.

(5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot.

(d) All horse owners are eligible to vote in the referendum. Any questions concerning eligibility to vote shall be resolved by the board of directors of the Council.

"**§ 106-824. Majority vote required; collection of assessment.**

(a) The assessment shall not be collected unless a majority of the votes cast in the referendum is in favor of the assessment. If a majority of the votes cast in the referendum is in favor of the assessment, the Department shall notify all commercial horse feed manufacturers and distributors of the assessment. The assessment shall apply to all commercial horse feed subject to the provisions of G.S. 106-284.40(b), and the assessment shall be remitted to the Department with the inspection fee imposed by G.S. 106-284.40. The Department shall provide forms for reporting the assessment. Persons who purchase commercial horse feed on which the assessment has not been paid shall report these purchases and pay the assessment to the Department.

(b) The Council may bring an action to collect unpaid assessments against any horse owner, feed manufacturer, or distributor who fails to pay the assessment and, if successful, shall recover the cost of such action, including attorneys' fees.

"**§ 106-825. Use of funds; refunds.**

(a) The Department shall remit all funds collected under this Article to the Council at least quarterly. The Council shall use these funds to promote the interests of the horse industry and may use these funds for those administrative expenses that are reasonably necessary to carry out this function.

(b) Any person who purchases commercial horse feed upon which the assessment has been paid shall have the right to receive a refund of the assessment by making demand in writing to the Council within 30 days of purchase of the feed. This demand shall be accompanied by proof of purchase satisfactory to the Council."

Section 2. G.S. 106-550 reads as rewritten:

"**§ 106-550. Policy as to promotion of use of, and markets for, farm products.**

It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, sweet potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the agricultural products of tobacco, strawberries, strawberry plants, ~~or~~ porcine animals, or horses, with respect to which separate provisions have been made."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1529 (Second Edition)

SHORT TITLE: Horse Promotion Assessment

SPONSOR(S): Rep. Brown

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Horse Council Funds	$200,000	$200,000	$200,000		
EXPENDITURES	(to be determined by the Horse Council)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Agriculture and Consumer Services

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: The bill authorizes the North Carolina Horse Council to hold a referendum among horse owners on whether to levy a fee of up to $2 a ton on commercial horse feed for the purpose of promoting the horse industry. If approved by a majority of the horse owners, the Department of Agriculture and Consumer Services will collect the fee from commercial feed dealers and distributors and remit the funds to the Horse Council on a quarterly basis. The assessment will be levied for no more than three years. Horse owners have a right to request a refund of the fee from the Horse Council if they do not wish to participate in the promotion effort.

ASSUMPTIONS AND METHODOLOGY: In the 1996 North Carolina Equine Survey, the Department of Agriculture and Consumer Services identified 33,000 equine owners and 132,000 head of equine in the state. The Department 's 1996 Feed Tonnage Report showed 97,279 tons of horse feed were purchased in the state. Horse feed sales grew 8.7% a year from 1993 to 1996, but the growth rate was only 4.4% from 1995 to 1996. Without data on the projected growth in the state's equine herd, it is impossible to predict what the future growth in feed sales will be. This

note assumes a flat 100,000 tons of horse feed are purchased each year during the three years that the assessment is in place. If the referendum is successful, this note assumes the Horse Council will assess $2 per ton beginning in FY 1998-99 for revenues of $200,000 per year.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington

DATE: June 20, 1998

EXPLANATION OF HOUSE BILL 1529 (2d Ed.):
Horse Promotion Assessment

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 23, 1998
SPONSOR: Representative Brown

House Bill 1529 provides for a referendum to allow horse owners to assess themselves through a levy on commercial horse feed, in order to provide funds to the North Carolina Horse Council. These funds will be used to promote interests in the horse industry and for administrative expenses reasonably necessary to carry out this promotion. The 2nd Edition differs from the introduced bill by adding definitions for "equine" and "horse owner". This 2nd Edition was given a favorable report in the House Committee on Agriculture. The act is effective when it become law.

House Bill 1529 authorizes the North Carolina Horse Council to conduct a referendum among horse owners to determine if the assessment should be levied. To take effect, the assessment must be approved by a majority of votes cast in the referendum. The amount of the assessment may not exceed $2 per ton of commercial horse feed and shall not extend for a period of more than 3 years. The Council is to determine the exact amount and period of the levy.

If the assessment is approved, the North Carolina Department of Agriculture and Consumer Services shall notify all commercial feed dealers and distributors of the assessment and shall provide forms for reporting the assessment. The assessment is to be remitted to the Department with the inspection feed imposed under the Commercial Feed Law, Article 31C of Chapter 106. Anyone who purchases commercial horse feed upon which the assessment has been paid may demand a refund of the assessment by writing the Horse Council within 30 days of buying the feed and providing proof of purchase.

The Department is to remit funds to the North Carolina Horse Council at least quarterly.

Similar promotion assessment acts have been enacted for flue-cured tobacco farmers, strawberry producers and pork producers,

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 649
Finance Committee Substitute Adopted 5/20/97

Short Title: Lobbyist Penalty. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR LATE FILING OF REPORTS BY LOBBYIST AND PRINCIPAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 2. G.S. 120-47.7(d) reads as rewritten:

"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ~~($10.00).~~ ($10.00) a day for the first 30 days the report is late and fifty dollars ($50.00) a day for every day thereafter, not to exceed one thousand dollars ($1,000). A lobbyist's principal who is assessed a late filing fee under this section may appeal to the Secretary of State within 10 days of receipt of notice of the assessment seeking a waiver of the assessment for good cause shown. Good cause shall consist of excusable neglect, unavoidable delay, or impossibility of performance.

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. This act becomes effective January 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1327
Finance Committee Substitute Adopted 6/10/98
Proposed House Finance Committee Substitute S1327-PCS3627-RB

Short Title: No Tax on Gas Cities. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES AND TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5E.

"Piped Natural Gas Tax.

"**§ 105-187.40. Definitions.**

The definitions in G.S. 105-228.90 and the following definitions apply in this Article:

(1) Gas city. -- A city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

(2) Local distribution company. -- A natural gas company to whom the North Carolina Utilities Commission has issued a franchise under Chapter 62 of the General Statutes to serve an area of this State.

(3) Premises. -- Defined in G.S. 62-110.2. When applying the definition of premises to this Article, electric service is to be construed as piped natural gas service.

(4) Sales customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by the seller of the gas.

(5) Transportation customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by a person who is not the seller of the gas.

"§ 105-187.41. Tax imposed on piped natural gas.

(a) Scope. -- An excise tax is imposed on piped natural gas received for consumption in this State. This tax is imposed in lieu of a sales and use tax and a percentage gross receipts tax on piped natural gas.

(b) Rate. -- The tax rate is set in the table below. The tax rate is based on monthly therm volumes of piped natural gas received by the end-user of the gas. If an end-user receives piped natural gas that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices, unless the devices are located on the same premises and are part of the same billing account. In that circumstance, the tax is calculated on the total volume metered through the two or more separate measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$.0470
201 to 15,000	.0350
15,001 to 60,000	.0240
60,001 to 500,000	.0200
Over 500,000	.0015

(c) Gas City Exemption. -- The tax imposed by this section does not apply to piped natural gas received by a gas city for consumption by that city or to piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

"§ 105-187.42. Liability for the tax.

The excise tax imposed by this section on piped natural gas is payable as follows:

(1) For piped natural gas delivered by a local distribution company to a sales or transportation customer, the tax is payable by the local distribution company.

(2) For piped natural gas delivered by a person who is not a local distribution company to a sales or transportation customer, the tax is payable by that person.

(3) For piped natural gas received by a person by means of direct access to an interstate gas pipeline for consumption by that person, the tax is payable by that person.

"§ 105-187.43. Payment of the tax.

(a) Monthly Return. -- The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is

delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) Small Underpayments. -- A person is not subject to interest on or penalties for an underpayment of a monthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.

"§ 105-187.44. Distribution of part of tax proceeds to cities.

(a) City Information. -- A monthly return filed under this Article must indicate the amount of tax attributable to the following: if a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city:

(1) Piped natural gas delivered during the month to sales or transportation customers in each city in the State.

(2) Piped natural gas received during the month in each city in the State by persons who have direct access to an interstate gas pipeline and who receive the gas for their own consumption.

(b) Distribution. -- Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section.

"§ 105-187.45. Information exchange and information returns.

(a) Utilities Information. -- The North Carolina Utilities Commission or the Public Staff of that Commission must give the Secretary a list of the entities that receive piped natural gas from an interstate pipeline and any other information available to the Commission that the Secretary asks for in administering the tax imposed by this Article.

(b) Information Return. -- The Secretary may require the operator of an interstate pipeline to report the amount of piped natural gas taken from the pipeline in this State, the persons that received the gas, and the volume received by each person.

"§ 105-187.46. Records and audits.

(a) Records. -- A person who is required to file a return under this Article must keep a record of all documents used to determine information provided in the return. The records must be kept for three years after the due date of the return to which the records apply.

(b) Audits. -- The Secretary may audit a person who is required to file a return under this Article."

Section 2. G.S. 105-116 reads as rewritten:

"§ 105-116. Franchise or privilege tax on electric power, ~~natural gas,~~ water, and sewerage companies.

(a) Tax. -- An annual franchise or privilege tax is imposed on the following:

(1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.

~~(2) A natural gas company engaged in the business of furnishing piped natural gas.~~

~~(2a) A regional natural gas district created under Article 28 of Chapter 160A of the General Statutes.~~

(3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.

(4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. ~~The tax on a natural gas company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing piped natural gas.~~ The tax on a regional natural gas district is three and twenty-two hundredths percent (3.22%) of the district's taxable gross receipts from the furnishing of piped natural gas. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Report and Payment. -- The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. An electric power ~~company, a natural gas company, or a regional natural gas district~~ company shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. A taxpayer is not subject to interest on or penalties for an underpayment of a monthly amount due if the taxpayer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files. A water company or a public sewerage company shall pay tax quarterly when filing a report.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A taxpayer shall submit a report on a form provided by the Secretary. The report shall include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

(1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under ~~G.S. Chapter 159B~~ Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power ~~company, a natural gas company, or a regional natural gas district,~~ company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a).

A taxpayer ~~shall~~ must report its gross receipts on an accrual basis. If a taxpayer's report does not state the taxpayer's taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the taxpayer's taxable gross receipts to the city.

~~(e) Gas Special Charges. -- Gross receipts of a natural gas company do not include the following:~~

~~(1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.~~

~~(2) Natural gas expansion surcharges imposed under G.S. 62-158.~~

(d) Distribution. -- Part of the taxes imposed by this section on electric power companies, natural gas companies, and regional natural gas districts is distributed to cities under G.S. 105-116.1.

(e) Local Tax. -- So long as there is a distribution to cities from the tax imposed by this section, no city shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. ~~If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment.~~

~~(f) Gas City Exemption. -- The tax imposed by this section does not apply to the following cities that operate their own piped natural gas systems: Bessemer City, Kings Mountain, Lexington, Shelby, Greenville, Monroe, Rocky Mount, and Wilson.~~"

Section 3. G.S. 105-116.1 reads as rewritten:

"**§ 105-116.1. Distribution of gross receipts taxes to cities.**

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

(1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power ~~company, a natural gas company, a regional natural gas district,~~ company and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) Distribution. -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric power ~~companies, natural gas companies, regional natural gas districts,~~ companies and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.

(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsection (c) of this section. This amount is the total hold-harmless adjustment.

(2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their

percentage distribution amount minus one-fourth of their freeze deduction.

(3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

(4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 4. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means an electric power ~~company, a gas company, a regional naturalgas district,~~ company or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. ~~105-120(e)~~ 105-120(e), or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

(1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

(1a) The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser. The maximum tax is three hundred dollars ($300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.

(1b) The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article.

(1c) The rate of one percent (1%) applies to the sales price of the following articles:

a. Horses or mules by whomsoever sold.

b. Semen to be used in the artificial insemination of animals.

c. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to farmers to be used by them for any farm purposes other than preparing food, heating ~~dwellings~~ dwellings, and other household purposes. The quantity of

fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed ~~herein.~~ by this subdivision.

d. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.

e. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

(1d) The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars ($80.00) per article.

a. Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under this section.

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or

which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term 'manufacturing industries and plants' does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.

f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.

h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached,

and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.

(1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity ~~and piped natural gas~~ described in this subdivision and measured by a separate meter or another separate device:

a. Sales of electricity ~~and piped natural gas~~ to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

b. Sales of electricity ~~and piped natural gas~~ to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity ~~and gas~~ to be used for residential heating purposes. The quantity of electricity ~~or gas~~ purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

c. Sales of electricity ~~and piped natural gas~~ to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

(2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents

property shall also collect the tax imposed by this section on the separate retail sale of the property.

(3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term 'persons who rent to transients' means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including 'real estate brokers' as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

(4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.

(4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of ~~electricity, piped natural gas,~~ electricity or local telecommunications service as defined by G.S. 105-120(e), other than sales of electricity ~~or piped natural gas~~ subject to tax under another subdivision in this section. ~~Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158.~~ A person who operates a utility is considered a retailer under this Article.

(4b) A person who sells tangible personal property at a flea market, other than the person's own household personal property, is

considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the flea market. A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term 'flea market' means a place where space is rented to a person for the purpose of selling tangible personal property.

(4c) The rate of six and one-half percent (6 1/2%) applies to the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate from and terminate in the State and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides these services is considered a retailer under this Article. This subdivision does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

(5) **(Effective until July 1, 1998)** The rate of three percent (3%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

(5) **(Effective July 1, 1998)** The rate of two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 6. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Piped natural gas. -- This item is exempt because it is taxed under Article 5E of this Chapter."

Section 7. G.S. 105-164.20 reads as rewritten:

"**§ 105-164.20. Cash or accrual basis of reporting.**

Any retailer, except a utility, ~~taxable under this Article having both cash and credit sales~~ may report ~~such~~ sales on either the cash or accrual basis of accounting upon making application to the Secretary for permission to use ~~such~~ the basis ~~of reporting under such rules and regulations as shall be promulgated from time to time by the Secretary. Such permission shall continue in force and effect unless revoked by the Secretary but he may grant written permission to any such taxpayer upon application therefor to change from one basis to another under such rules and regulations. A utility shall~~ selected. Permission granted by the Secretary to report on a selected basis continues in effect until revoked by the Secretary or the taxpayer receives

permission from the Secretary to change the basis selected. A utility must report its sales on an accrual basis. A sale by a utility of ~~electricity, piped natural gas,~~ electricity or intrastate telephone service is considered to accrue when the utility bills its customer for the sale."

Section 8. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above

described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

~~In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter.~~"

Section 9. G.S. 105-122 is amended by adding a new subsection to read:

"(d1) Credits. -- A corporation is allowed the following credits against the tax imposed by this section for a taxable year:

(1) The credit claimed for the taxable year under Division V of Article 4 of this Chapter.

(2) One-half of the amount of tax payable during the taxable year under Article 5E of this Chapter."

Section 10. G.S. 105-259(b)(5b) reads as rewritten:

"(5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts ~~that were derived from sales within the city and used to determine the city's distribution~~ and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 ~~or~~ and G.S. 105-187.44 or under former ~~distribution under~~ G.S. 105-116 and G.S. 105-120."

Section 11. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(21) To exchange information concerning the tax on piped natural gas imposed by Article 5E of this Chapter with the North Carolina Utilities Commission or the Public Staff of that Commission."

Section 12. G.S. 160A-211 is amended by adding a new subsection to read:

"(c) Piped Gas Restriction. -- A city may not levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes."

Section 13. Notwithstanding G.S. 105-164.4 and G.S. 105-164.6, sales and use tax levied under Article 5 of Chapter 105 of the General Statutes does not apply to piped natural gas sold by a city in this State that operated a piped natural gas

distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

Section 14. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 15. Sections 1 through 12 of this act become effective January 1, 1999, and apply to piped natural gas delivered on or after that date. Section 13 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF SENATE BILL 1327:
Proposed House Committee Substitute
No Tax on Gas Cities

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 22, 1998
SPONSOR: Senator Walter Dalton

Senate Bill 1327 combines the current taxes on piped natural gas into a single, per therm tax and applies the tax uniformly to all sales of piped natural gas not exempt from the tax, effective January 1, 1999. The bill preserves the tax-exempt status for piped natural gas sold by one of the eight municipalities that operate their own piped gas system by exempting them from the tax. The **proposed committee substitute**, proposed by the sponsor of the bill, simply changes the lowest rate from .004 to .0015.

There are three types of sellers of piped natural gas: a utility company, a gas marketer, and a gas city. A utility company is a utility regulated by the Utilities Commission. A gas marketer is a person who sells piped natural gas but is not a regulated utility. Gas marketers use the pipeline infrastructure of the utilities to deliver the gas they sell and they pay a transportation charge to the utilities for this service. Piped natural gas is increasingly sold by persons who are not utilities. A gas city is a city that operates its own piped gas system. Eight cities in the State do this and have since at least the 1950's. The eight gas cities are: Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

Two taxes now apply to piped natural gas. The applicability and rate of the taxes varies depending upon both the identity of the seller and the identity of the consumer. One of these taxes is a gross receipts tax equal to 3.22% of the gross receipts derived by a utility from the business of furnishing piped natural gas. The franchise tax applies only to the receipts of a regulated utility. The franchise tax on piped natural gas was enacted around 1925, when only regulated utilities could sell piped natural gas. Federal and state regulation of the piped natural gas industry has changed and now these regulations allow persons who are not utilities to sell piped natural gas. Therefore, gas marketers and gas cities, because they are not regulated utilities, are not subject to the franchise tax, except to the extent it is imposed on the transportation charges or embedded in the price paid on gas bought from a utility for resale to customers.

The second of these two taxes is the sales tax on piped gas. This tax is the result of a change made by the General Assembly in 1985. That year, the existing 6% utility franchise tax was split into a 3% sales tax and a 3.22% gross receipts tax to

make the sales tax portion deductible by individuals on their federal income tax returns. Although the federal tax law changes in 1986 removed this deduction, North Carolina did not change its taxation of utilities.

For several years, the Department did not impose the general 4% State and 2% local sales and use tax rate to the sale of piped natural gas. However, under a directive recently issued by the Department of Revenue, the Department clarified that piped natural gas is tangible personal property as that term is defined in the sales and use tax statutes. Therefore, effective July 1, 1998, the retail sale of piped natural gas is subject to sales and use tax unless specifically exempted by statute.

The only sales tax exemption applicable to piped natural gas is the "products of the mine" exemption. Under that exemption, the sale of piped gas by the producer of the gas, in the producer's capacity as a producer, is exempt from sales and use tax. Few consumers of piped natural gas buy their gas directly from the producer.

The sale of piped gas by a gas city or by a gas marketer is not exempt from sales and use tax. Therefore, the retail sale of piped gas by these sellers is subject to a 6% State and local sales and use tax unless a lower rate applies. The law provides a lower rate of 3% for all sales made by regulated utilities and a lower rate of 2.83% for sales made to farmers, manufacturers, and laundries. Piped natural gas taxes at the State rate of 3% or 2.83% are not subject to the 2% local sales and use tax. If piped natural gas is purchased from a seller who is not required to collect North Carolina sales tax, then the purchaser is subject to a use tax on the purchase.

Prior to the Department's sales tax directive, the sales and use tax was not imposed on the sale of piped natural gas sold by gas cities and gas marketers. The changes made by the directive become effective July 1, 1998. This bill preserves the tax-exempt status for piped natural gas sold by gas cities.

To correct the other inequities embedded in the bifurcated taxation of piped natural gas, the bill eliminates the distinction between sales by utilities and sales by others and applies a uniform tax to all piped natural gas consumed in this State. The uniform tax is an excise tax on the gas. The tax rate is structured as a "declining block" that decreases as the amount of therms of piped gas consumed in a month increases. A declining block tax rate is used to preserve the current distribution of the tax burden between the three classes of piped gas customers. These three classes are residential, business, and industrial. The current taxes are a percentage of price. The rates for the three classes are also based on price; residential rates are the highest, business rates are in the middle, and industrial rates are the lowest. The current combination of rate and tax therefore results in a higher effective rate of tax on residential customers and a lower rate on business and industrial customers.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1327 (Proprosed Committee Substitute)

SHORT TITLE: No Tax on Gas Cities

SPONSOR(S): Senators Dalton and Phillips

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

(Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
TOTAL Pre - Directive					
General Fund	**(.4)**	**(.7)**	**(.7)**	**(.7)**	**(.7)**
Cities	**(.3)**	**(.5)**	**(.5)**	**(.5)**	**(.5)**
Post - Directive Additions					
General Fund	**(4.7)**	**(6.8)**	**(6.9)**	**(7.0)**	**(7.2)**
Cities and Counties	**(0.3)**	**(0.6)**	**(0.6)**	**(0.7)**	**(0.7)**
TOTAL Post - Directive					
General Fund	**(5.1)**	**(7.5)**	**(7.6)**	**(7.7)**	**(7.9)**
Local Governments	**(.6)**	**(1.1)**	**(1.1)**	**(1.2)**	**(1.2)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Counties, and Municipalities.

EFFECTIVE DATE: July 1, 1998 for gas cities provisions. All other sections become effective January 1, 1998.

BILL SUMMARY: This bill restructures state excise taxes on natural gas. The bill eliminates the distinction between sales by utilities and sales by others, and applies a uniform excise tax to all piped natural gas consumed in North Carolina. The rate is structured as a "declining block" that decreases as the amount of gas consumed per month increases. The new tax rate is based on the amount of gas consumed, rather than the price paid for the gas. The bill also exempts those cities with their own piped gas systems from the new tax.

BACKGROUND: In the natural gas industry there are three types of sellers: utility companies, gas marketers, and cities that sell their own gas. Several types of tax now apply to piped natural gas, with the rates and type of tax charged determined by the type of seller and buyer. Utility companies are responsible for a sales tax of 3% (2.83% if the customer is a manufacturer) and a gross receipts tax of 3.22% on the commodity price. Under current law the utilities are the only group responsible for sales tax. Gas marketers are responsible for a gross receipts tax on the transportation charge (not the commodity price). However, if the gas is sold to a customer with direct access, no gross receipts tax is payable. Gas cities pay no sales tax, but pay a gross receipts tax only on the gas they purchase for resale from a North Carolina utility. A use tax should be paid by the customers of natural gas marketers. All taxes are based on the price paid for the gas.

On May 5, 1998, the Department of Revenue issued a directive (SD-98-2) concerning the sale of piped natural gas. As of July 1, 1998, piped natural gas will be defined as tangible personal property and its retail sale will be subject to the 6% sales and use tax (4% state and 2% local), unless specifically exempt by statute. Sales of piped natural gas by the producer will continue to be exempt from sales tax. The sale of piped gas by a city is not exempt, and is subject to either a 3% (if utility) or 6% (not a utility) sales tax. A gas marketer is not exempt and would be responsible for the 6% rate. All gas sold to farmers, manufacturers, or laundries will be subject to a 2.83% tax. Utilities will only be responsible for a 3% sales tax rate, or 2.83% if the gas is sold to farmers, manufacturers, or laundries.

ASSUMPTIONS AND METHODOLOGY:

PRE - DOR DIRECTIVE

The first estimate made for SB 1327 is the revenue impact the change in tax rate and tax structure would have on the General Fund and on local governments without the Department of Revenue directive. Actual sales and gross receipts tax collections (related to piped natural gas) in 1997 were estimated to be $58.4 million by the Public Staff of the Utilities Commission. In the same year an additional $1.8 million in use taxes were paid to the Department of Revenue. As such, the total tax collections from natural gas were estimated to be $60.2 million. To determine the anticipated revenue for fiscal year 1998-99, this number was increased by 2% each year to reflect future growth. An adjustment was also made to convert the calendar year numbers to a fiscal year basis. After these calculations, the estimate for FY 1998-99 under the current law is $61,991,337.

SB 1327 proposes to tax natural gas on a declining block tax rate system where the tax decreases as the amount of therms of gas consumed increases. The bill has five tax blocks as shown in the chart on the next page. The tax revenue from the proposed tax rates is $60,801,803 or $1,189,534 less than the projected amount under the current law.

Rate Block (therms)	98-99 Estimated Deliveries (therms)	Rate per therm	98-99 Estimated Tax Receipts
Under 200	535,766,523	$0.0470	$25,181,027
201 to 15,000	354,303,606	$0.0350	12,400,626
15,001 to 60,000	272,888,227	$0.0240	6,549,317
60,001 to 500,000	730,938,356	$0.0200	14,618,767
500,001 and over	149,934,084	$0.0015	224,901
SB 1327 Rate Blocks	2,043,830,796		$58,974,638
Use Tax Revenue			$1,827,165
TOTAL SB 1327			**$60,801,803**
FY 1998-99 Revenue Est.(Current Law)			**$61,991,337**
Revenue Loss			**($1,189,534)**

This revenue loss is shared by the General Fund and cities. In 1996 and 1997 gross receipts revenues, on average, accounted for 52.8% of the total estimated natural gas revenue. The remaining 47.2% comes from sales tax. All of the sales tax revenue remains with the state. The Department of Revenue estimates that approximately 80.4% of the gross receipts tax revenue is distributed to the cities. As a result, the loss in revenue will be distributed 42.45% to the cities (52.8% * 80.4%) and 57.55% to the state. The General Fund revenue loss will be subtracted from projected General Fund tax revenues for FY 1998-99. The revenue loss in the chart above is estimated to grow by 2% a year for fiscal years 1999-00 to 2002-03. The 1998-9 estimate on page one is ½ this amount, as the bill takes effective in January 1999.

POST - DOR DIRECTIVE

Without SB 1327, the state, counties and cities will gain revenue from the taxes imposed on gas cities and natural gas marketers due to the DOR directive. In 1997 it is estimated that marketers sold 64,275,492 decatherms of natural gas valued at $160,688,730. Although not taxed at the marketer level, the Department of Revenue attempts to collect the use tax on the gas from the customers. This note assumes the Department collects use tax (2.83% and 6%) on 25% of the volume sold by marketers. The remaining 75% will be taxed according to the directive. The fiscal note assumes 75% of the volume untaxed prior to July 1, 1998 is going to manufacturers and will be taxed at 2.83%. The fiscal note assumes the other 25% of untaxed gas will be taxed at 6% with the revenue split 4% state and 2% local. Future year growth in gas volume is estimated at 2% a year.

	Gas sold by Marketers	Gas Value	use tax paid on 25% of volume	25% of remainder taxed 6%	75% of remainder taxed 2.83%
1997	64,275,492	$160,688,730	$ 1,773,602	$ 1,807,748	$ 2,557,964
1998	65,561,002	$163,902,505	$ 1,809,074	$ 1,843,903	$ 2,609,123
1999	66,872,222	$167,180,555	$ 1,845,255	$ 1,880,781	$ 2,661,305
2000	68,209,666	$170,524,166	$ 1,882,160	$ 1,918,397	$ 2,714,532
2001	69,573,860	$173,934,649	$ 1,919,804	$ 1,956,765	$ 2,768,822
2002	70,965,337	$177,413,342	$ 1,958,200	$ 1,995,900	$ 2,824,199
2003	72,384,644	$180,961,609	$ 1,997,364	$ 2,035,818	$ 2,880,683
2004	73,832,336	$184,580,841	$ 2,037,311	$ 2,076,534	$ 2,938,296

The other new revenue is from a sales tax on the eight municipal gas systems in the state. In 1997, these cities sold natural gas worth $90 million. Since 7 of the 8 municipal gas systems are utilities, this fiscal note assumes the city gas sales will be taxed at the utilities rate of 3%. A 2% growth rate is used for future year revenues.

	Value of Gas sold by cities	3% tax
1997	$ 90,000,000	$2,700,000
1998	$ 91,800,000	$2,754,000
1999	$ 93,636,000	$2,809,080
2000	$ 95,508,720	$2,865,262
2001	$ 97,418,894	$2,922,567
2002	$ 99,367,272	$2,981,018
2003	$101,354,618	$3,040,639
2004	$103,381,710	$3,101,451

Fiscal year cost is derived from the calendar year estimates by taking half of one year plus half of the next year. For example, the FY 1998-99 estimate equals half of 1998 and half of 1999. The state revenue includes 2/3 of the 6% sales on marketers, all of the 2.83% on marketers, and the tax on gas cities. The local revenue equals 1/3 of the 6% tax on marketers.

	State	Local
FY 97-98	$6,527,760	$608,609
FY 98-99	$6,658,316	$620,781
FY 99-00	$6,791,482	$633,196
FY 00-01	$6,927,312	$645,860
FY 01-02	$7,065,858	$658,777
FY 02-03	$7,207,175	$671,953

Although this fiscal note shows a loss of post - directive revenue due to this bill, this income was not built into the consensus General Fund revenue estimate for FY 1998-99. The 1998-9 estimates on page one reflect ½ of the revenue loss associated with the everything except the gas cities, as these provisions do not come into affect until January 1999. Because the gas cities

exemption becomes effective at the beginning of the fiscal year, the entire cost is included in the estimate.

TECHNICAL CONSIDERATIONS: It should be noted that natural gas prices are highly volatile and very sensitive to changes in climate and market forces. As such, year to year variations in the revenue associated with natural gas taxes, under the current system, can vary dramatically. It should also be noted that an increase in transportation gas directly increases the amount of revenue distributed to cities. This note differs from the previous note because of 1) the change in the rate for the largest rate block (500,001 and over) 2) new data from the Department of Revenue concerning the distribution of natural gas revenues, and 3) inclusion of the use taxes paid in the base revenue estimate, under the current system.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps & Richard Bostic
APPROVED BY: Tom Covington

DATE: June 11, 1998

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1327-ARB-28 Page 1 of __

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [YES]
S1327-PCS3627-RB

Representative Berry

moves to amend the bill on page 1, lines 2 through 4, by rewriting those lines to read:
"AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY A SUPPLIER WHO IS NOT A REGULATED UTILITY AND TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO STUDY THE TAXATION OF PIPED NATURAL GAS.";

and on page 1, line 6 through page 15, line 10, by rewriting the lines to read:
"Section 1. Notwithstanding G.S. 105-164.4 and G.S. 105-164.6, sales and use tax levied under Article 5 of Chapter 105 of the General Statutes does not apply to piped natural gas sold by a person that is not subject to franchise tax under G.S. 105-116.
Section 2. The Revenue Laws Study Committee shall study the taxation of piped natural gas and shall report its findings and recommendations to the 1999 General Assembly.
Section 3. This act is effective when it becomes law. Section 1 of this act expires December 30, 2000.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1327-ARB-28 Page 2 of __

ADOPTED _____ FAILED _____ TABLED _____

McComas #1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1327-ARB-30 Page 1 of __

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [YES]
S1327-PCS3627-RB

Representative McComas

moves to amend the bill on page 1, lines 2 through 4, by rewriting the lines to read:
"AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES, TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM, AND TO DIRECT THE UTILITIES COMMISSION TO STUDY THE ISSUE OF TRANSPORTATION RATES.";

and on page 14, line 44 through page 15, line 2, by rewriting these lines to read:
"to piped natural gas sold by a person that is not subject to franchise tax under G.S. 105-116.";

and on page 15, lines 2 and 3, by inserting a new section between those lines to read:
"Section 14. The Utilities Commission shall study the transportation rates charged by the local distribution companies to transport piped natural gas from the interstate pipeline to the consumer.";

and on page 15, line 3, by deleting "Section 14." and substituting "Section 15.";

and on page 15, line 7, by deleting "Section 15." and substituting "Section 16.";

and on page 15, lines 7 and 8, by deleting "January 1, 1999," and substituting "July 1, 1999,".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1327-ARB-30

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

McComas #2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1327-ARB-32

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [YES]
S1327-PCS3627-RB

Representative

moves to amend the bill on page 2, line 24, by deleting ".0200" and substituting ".015";

and on page 2, line 25, by deleting ".0015" and substituting ".003".

SIGNED _____

Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

Baddour #3

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1327-ARB-23

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [YES]
S1327-PCS3627-RB

Representative Baddour

moves to amend the bill on page 1, line 3, by deleting "MUNICIPALITIES AND" and substituting "MUNICIPALITIES,";

and on page 1, line 4, by deleting "UNIFORM." and substituting "UNIFORM, TO HOLD CITIES HARMLESS UNTIL JUNE 30, 2000, AND TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO DETERMINE THE IMPACT OF THE TAX ON THE DISTRIBUTION TO CITIES.";

and on page 15, lines 2 and 3, by inserting a new section between those lines to reads:

"Section 14. (a) Notwithstanding G.S. 105-187.44(b), as enacted by this act, the amount distributed to a city under G.S. 105-187.44(b) for taxes collected for each of the quarters in the fiscal year 1999-2000 may not exceed its benchmark amount until each city receives an amount equal to its benchmark amount. Each quarter, the Secretary of Revenue shall determine a city's benchmark amount and the amount it would receive under G.S. 105-187.44(b) if not for the redistribution required by this section. The Secretary shall identify those cities whose distribution amounts under G.S. 105-187.44(b) are less than their benchmark amounts and shall determine the total dollar amount of the shortfall. The Secretary shall reduce the amount to be distributed to those cities whose distribution amount under G.S. 105-187.44(b) exceeds their benchmark amount by the total dollar amount of the shortfall determined for that quarter in proportion to each city's excess. However, in no event may a city's distribution amount be reduced below its benchmark amount. The Secretary will redistribute these monies to the cities whose distribution amounts under G.S. 105-187.44(b) are

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1327-ARB-23 Page 2 of __

less than their benchmark amounts in proportion to each city's shortfall. In any quarter that a city does not have a prior year's distribution for the corresponding quarter in fiscal year 1998-99, that city is excluded from the redistribution required under this section for that quarter. In that case, the city will receive the amount it is entitled to receive under G.S. 105-187.44(b), as enacted by this act.

For the purposes of this subsection, the term "benchmark amount" means the amount a city received under G.S. 105-116.1 attributable to piped natural gas for the corresponding quarter during the fiscal year 1998-1999.

(b) The Department of Revenue must calculate the amount a city received for taxes collected for each of the first three quarters in fiscal year 1998-99 under G.S. 105-116.1 that was attributable to piped natural gas. The Department must also calculate the amount each city would have received under G.S. 105-187.44(b), as enacted by this act, for taxes collected for each of the first three quarters in fiscal year 1999-2000. The Department shall give this information to the Revenue Laws Study Committee. The Revenue Laws Study Committee shall study the impact of this act on the distribution of part of the proceeds of the excise tax on piped natural gas to the cities and report its findings, and any recommendation, to the 2000 session of the 1999 General Assembly.";

and on page 15, line 3, by deleting "Section 14." and substituting "Section 15.";

and on page 14, line 7, by deleting "Section 15." and substituting "Section 16.";

and on page 14, line 10, by adding a new sentence at the end of that line to read: "Section 14 of this act expires June 30, 2000."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Berry Amendment

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1327-ARB-33

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [YES]
S1327-PCS3627-RB

Representative Berry

moves to amend the bill on page 1, lines 2 through 4, by rewriting those lines to read:
"AN ACT TO TEMPORARILY EXEMPT FROM SALES AND USE TAX PIPED NATURAL GAS SOLD BY A SUPPLIER WHO IS NOT A REGULATED UTILITY AND TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO STUDY THE TAXATION OF PIPED NATURAL GAS WITH THE ASSISTANCE OF THE UTILITIES COMMISSION STAFF.";

and on page 1, line 6 through page 15, line 10, by rewriting the lines to read:

"Section 1. Notwithstanding G.S. 105-164.4 and G.S. 105-164.6, sales and use tax levied under Article 5 of Chapter 105 of the General Statutes does not apply to piped natural gas sold by a person that is not subject to franchise tax under G.S. 105-116.

Section 2. The Revenue Laws Study Committee shall study the taxation of piped natural gas and shall report its findings and recommendations to the 1999 General Assembly. The Utilities Commission, at the request of the Revenue Laws Study Committee, shall make available to the Committee the knowledge and expertise of its staff as to the industry and regulation of piped natural gas.

Section 3. This act is effective when it becomes law. Section 1 of this act expires December 30, ~~2000~~ 1999.".

SIGNED Cherie Berry

Amendment Sponsor

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1327-ARB-33 Page 2 of __

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

House Finance — June 24, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
ANDY SABOL	DEPT. OF REVENUE
Bob Bennink	NCUC ~~Staff~~
Sam Kirkley	NCUC
Tom Grubb	Citizen
Mike Stack	NC Bankers Assn.
Paul Gwin	OSBM
Patti Seawell	DOR
Lou Wilson	NCALTCF

VISITOR REGISTRATION SHEET

Horse Pasture — June 24, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Allyson Duncan	Kilpatrick Stockton
Chip Kullman	Moore & Van Allen
Ed Leggett	Jasper Textiles
Bonnard Allen	SOS
Elaine F. Marshall	SOS
Andy Sands	WCSR
Stanot Dixon	NCNB
Marvin Numbers	Poyner & Spruill
Mary J. Kelly	Sec. of State
Cheri L. Myers	Sec. of State
BK Kindberg	Hoechst Celanese
Ann Turner	Public Staff - NCUC

VISITOR REGISTRATION SHEET

House Finance — June 24, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jim Hoard	Public Staff - NCUC
Mike Philbrick	City of Shelby
Betsy Fonvielle	City of Shelby
Kevin Allen	City of Shelby
Deo Freeman	City Of Shelby
Kelli Kuhna	DuPont
Jim Bell	Attorney
Fran Piercy	Capital Group
Smith Lingerfelt	City of Shelby
Chuck Whitley	City of Wilson

VISITOR REGISTRATION SHEET

House Finance — June 24, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
J Carlyle Deaton	NC House Council
Bill Gardner	NC Home Council
Maxine Rhodes	" " "
Charles Francis	Ward & Francis, PLLC
Jerry Roberts	C.U.C.A.
Sharon Miller	CUCA
John McArthur	Duke Energy
Tom Mann	Sprint
Natalie Haskins	Charlotte Chamber
Betty Daniel	DOR
Sabra Faires	Dept of Revenue
Charles Colbert	" "

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, JUNE 23, 1998

8:30 A.M. and AFTER SESSION

ROOM 544-LOB

The House Committee on Finance met on Tuesday, June 23, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Rep. C. Wilson called the meeting to order and introduced the Pages.

SB-1229 ABOLISH INHERITANCE TAX WAIVERS

Sen. Kerr explained the bill. Rep. Cunningham moved for a favorable report. Rep. Baddour questioned Sen. Kerr and he responded. Rep. Hackney questioned how Department of Revenue knows when an individual dies. Mr. Charles Hawks, Department of Revenue responded to his inquiry. The vote was taken and given a favorable report.

HB-1248 EXEMPT TOBACCO ASSISTANCE PAYMENTS

Chairman Wilson advised that we had a motion for a favorable report from our last meeting. Rep. Luebke asked staff to explain the fiscal note. Mr. Richard Bostic explained. Rep. Luebke asked Rep. Baker if he would hold this until Congress takes action. Rep. Baker advised he did not wish to wait and pursue this as is now. Rep. Cunningham asked Mr. Bostic how much revenue tobacco warehouse owners generate. Mr. Bostic advised he would get this information for him. Rep. McComas questioned subsidies. Mr. Bostic and Rep. Baker responded. Rep. Hensley questioned exports to foreign countries. Rep. Baker answered. Rep. Hensley spoke again on the bill and urged defeat until Congress takes action. Rep. Baker addressed his comments. Rep. Hill support the bill. Rep. Cole spoke. Rep. Brown called the question. The vote was taken and passed.

HB-1326 ELECTRONIC COMMERCE ACT

Chairman Wilson reminded members of action taken last week. Discussion continued with Rep. Goodwin offering support for the bill and moved for a

favorable report, unfavorable to the original bill. Mr. Walker Reagan, Research Division, gave additional explanation.

Rep. Hackney sent forth an amendment and explained. The bill sponsor was in agreement with the amendment. The vote was taken and the amendment was adopted.

Rep. Hackney sent forth a second amendment and explained. The vote was taken and the amendment was adopted.

Rep. Hackney sent forth a third amendment and explained. Rep. Goodwin asked staff to explain the bill as now amended and how this amendment will affect the bill. Mr. Reagan explained. The vote was taken and this amendment was adopted.

Rep. Hackney sent forth a fourth amendment and explained. Mr. Reagan also explained this amendment. The vote was taken and this amendment was adopted.

Rep. Dickson sent forth an amendment and explained. Rep. Reynolds supports this amendment. The vote was taken and the amendment was adopted.

The vote was taken on this bill and passed with a favorable report, unfavorable to the original bill.

SB-1327 NO TAX ON GAS CITIES

Rep. Nesbitt moved for adoption of the Proposed Committee Substitute for discussion. So moved. Sen. Dalton explained the bill. Ms. Linda Millsap, Fiscal Research Division, gave the explanation of the fiscal note. Chairman Wilson advised that we had several public speakers to address this bill and everyone would be given an opportunity to share their opinions. Rep. Luebke questioned Ms. Millsap about the directive of this bill and she responded. Sen. Dalton spoke again on his question. Ms. Sabre Fairies, Assistant Secretary, Department of Revenue, spoke in favor of the bill. Rep. Miller asked Ms. Fairies how this bill was initiated and she answered. Rep. Miller also questioned the effective date and Ms. Fairies replied. Dr. Lee Kindberg, Hoechst Celanese, addressed members and urged not to increase taxes. She also addressed comments made by Ms. Fairies. Rep. Nichols questioned Dr. Kindberg about the fiscal note, she responded. Sen. Dalton also addressed his questions/comments. Ms. Millsap gave additional explanation. Rep. Nichols asked Ms. Fairies about the Department's interpretation of legislation. She replied. Rep. Nichols spoke again and shared concerns. Mr. Tony Monfrado, Edenton Corp., addressed members and spoke on the bill. Sen. Dalton responded to his comments. Rep.

Jarrell expressed that she would like to hear from the League of Municipalities. Rep. Cunningham questioned the effective date. Sen. Dalton responded.

Time expired and Chairman Wilson announced the meeting would continue 30 minutes after session to complete discussion on this bill.

Chairman Wilson called the meeting back to order at 3:30. Discussion continued. Mr. Lynn Martin, RJR Packaging, Winston Salem, addressed members and urged defeat of the bill. Sen. Dalton responded to his comments. Mr. Doug McCaig, Allied Signal Fibers spoke to members and Sen. Dalton responded to his comments in that Mr. McCaig's comments reflect changes from the Utilities Commission. Chairman Wilson questioned Mr. McCaig about gas tax paid by his company. Mr. McCaig responded then Sen. Dalton spoke again. Rep. Arnold asked staff for clarification of Mr. McCaig's comments. Mr. Andy Romenet, NC League of Municipalities spoke on the bill and Sen. Dalton followed with a response. Rep. Luebke asked Mr. Romenet how this can cause winners and losers for some cities and he replied. Mr. Dee Freeman, City Manager of Shelby, NC, spoke and urged support. Rep. Neely asked how they deal with competition. Mr. Freeman answered. Sen. Dalton again made comments. Rep. McMahan had a clarifying question which Sen. Dalton answered. Mr. Bill McAulay, Public Service Gas Company addressed members. Sen. Dalton responded to his comments. Rep. Arnold questioned Mr. McAulay regarding his company's expansion to other areas of the state. Mr. McAulay responded. Ms. Kelli Kukura, Dupont, spoke on the bill and Sen. Dalton addressed her comments. Mr. Ed Leggett, Jasper Textiles, Lumberton, spoke against the bill. Rep. Arnold asked staff to clarify his comments and how the bill will affect his company. Ms. Cindy Avrette, Research Division responded. Ms. Sharon Miller, Carolina Utilities Association addressed members and opposed the bill as it was originally written. Rep. Womble had a series of questions for her. Rep. Brown asked why the hurry to take action on this bill. Sen. Dalton explained. Rep. Brown also asked how this affects cities that are not gas cities and Sen. Dalton explained. Rep. Miller spoke and suggested that the Utilities Commission study this issue and report back to the General Assembly. Chairman Wilson advised that a member had an amendment that was similar to that suggestion.

Rep. McComas sent forth an amendment, Chairman Wilson read and Rep. McComas explained. Rep. Cunningham and Rep. Capps questioned staff about the amendment. Ms. Avrette gave an additional explanation. Rep. Gray asked Mr. A. W. Turner, Staff Attorney with Public Utilities Commission to address his inquiry. He asked if the Public Utilities Commission hadn't been referred bills in the past from the General Assembly. Mr. Turner explained the process of the Public Utilities Commission in studying legislation. Rep. McComas advised he found errors in the language of his amendment and withdrew it.

Rep. Berry sent forth an amendment. Rep. Neely spoke in favor of the bill and advised that the Revenue Laws Study Committee had already studied this issue. He commended Sen. Dalton for this bill and urged defeat of the amendment. Sen. Dalton spoke again. Rep. Cunningham spoke on the amendment. Rep. Cunningham asked Rep. Berry if she would consider changing the date in her amendment from the year 2000 to 1999.

Rep. Cunningham offered a perfecting amendment to change the effective date to 1999.

Rep. Luebke spoke and urged caution on taking a vote on this issue. He asked to delay discussion until Wednesday. Rep. Nesbitt was concerned about the impact on industries that some of the guest speakers had mentioned. Ms. Miller, Carolina Utilities Association and Mr. Leggett, Jasper Textiles, both addressed his concerns. Rep. Capps supports the amendment but again questioned if this should be studied again by Revenue Laws Study Committee.

Chairman Wilson announced that discussion would continue on Wednesday morning.

Meeting adjourned at 5:20.

Connie Wilson
Rep. C. Wilson, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

TUESDAY, JUNE 23, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. C. Wilson

BILLS FOR DISCUSSION:

HB-1248 - Exempt Tobacco Assistance Payments	Rep. Baker
HB-1356 - Electronic Commerce Act	Rep. Reynolds
SB-1229 - Abolish Inheritance Tax Waivers	Sen. Kerr
SB-1327 - No Tax on Gas Cities	Sen. Dalton

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1248*
Committee Substitute Favorable 6/4/98
Proposed Committee Substitute H1248-CSLB-2

Short Title: Exempt Tobacco Assistance Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM INCOME TAX FEDERAL PAYMENTS TO TOBACCO ALLOTMENT HOLDERS, TOBACCO WORKERS, TOBACCO WAREHOUSE OWNERS, AND TOBACCO FARMERS AS COMPENSATION FOR LOSSES DUE TO FEDERAL LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(17) The amount paid to the taxpayer by the federal government during the taxable year as reimbursement for:

a. Loss of tobacco quotas.

b. Any purpose provided by federal legislation specific to the tobacco industry, which compensates the taxpayer for harm done to the tobacco industry by legislation specific to the tobacco industry. This paragraph specifically includes compensation by such legislation to owners of tobacco warehouses.

Section 2. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(15) The amount paid to the taxpayer by the federal government during the taxable year for any of the following:

a. Reimbursement for loss of tobacco quotas.

b. Transition assistance for tobacco workers.

c. Higher education assistance grants for members of tobacco farm families granted because of legislation specific to the tobacco industry.

d. Any purpose provided by federal legislation specific to the tobacco industry, which compensates the taxpayer for harm done to the tobacco industry by legislation specific to the tobacco industry. This paragraph specifically includes compensation by such legislation to owners of tobacco warehouses."

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1248 (Proposed Committee Substitute)

SHORT TITLE: Exempt Tobacco Assistance Payments

SPONSOR(S): Rep. Baker

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	**(see ASSUMPTIONS AND METHODOLOGY)**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: The act is effective for taxable years beginning on or after January 1, 1998.

BILL SUMMARY: The act exempts from state corporate and individual income tax the compensation received by tobacco allotment holders, tobacco workers, tobacco warehouse owners, and tobacco farmers for losses resulting from federal legislation.

ASSUMPTIONS AND METHODOLOGY: It is impossible to assess the fiscal impact of HB 1248 PCS without the passage of federal legislation on the tobacco settlement issue. As of June 22, 1998, there were 41 bills in the 105th U. S. Congress dealing with the June 1997 tobacco settlement between U.S. cigarette manufacturers and 40 states' attorney generals. Six of these bills, including Senator McCain's SB 1415, provide market transition assistance to tobacco quota holders, growers, workers, and producers. SB 1415 was debated for weeks by the U.S. Senate before it was returned to the Senate Committee on Commerce, Science and Transport on June 17. At this point, no federal legislation dealing with compensation to the tobacco producing community is imminent.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington
DATE: June 22, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1248*
Committee Substitute Favorable 6/4/98
Proposed Committee Substitute H1248-PCS9010-LB

Short Title: Exempt Tobacco Assistance Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM INCOME TAX FEDERAL PAYMENTS TO TOBACCO ALLOTMENT HOLDERS, TOBACCO WORKERS, AND TOBACCO FARMERS AS COMPENSATION FOR LOSSES DUE TO FEDERAL LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(17) The amount paid to the taxpayer by the federal government during the taxable year as reimbursement for loss of tobacco quotas."

Section 2. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(15) The amount paid to the taxpayer by the federal government during the taxable year for any of the following:

a. Reimbursement for loss of tobacco quotas.

b. Transition assistance for tobacco workers.

c. Higher education assistance grants for members of tobacco farm families granted because of legislation specific to the tobacco industry."

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1248*
Committee Substitute Favorable 6/4/98

Short Title: Exempt Tobacco Assistance Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM INCOME TAX FEDERAL PAYMENTS TO TOBACCO ALLOTMENT HOLDERS, TOBACCO WORKERS, AND TOBACCO FARMERS AS COMPENSATION FOR LOSSES DUE TO THE FEDERAL TOBACCO SETTLEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(17) The amount paid to the taxpayer by the federal government during the taxable year under the federal Long-Term Economic Assistance for Farmers (LEAF) Act as reimbursement for loss of tobacco quotas."

Section 2. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(15) The amount paid to the taxpayer by the federal government during the taxable year under the federal Long-Term Economic Assistance for Farmers (LEAF) Act as any of the following:

a. Reimbursement for loss of tobacco quotas.

b. Transition assistance for tobacco workers.

c. Higher education assistance grants for members of tobacco farm families."

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1248 A BILL TO BE ENTITLED AN ACT TO EXEMPT FROM INCOME TAX FEDERAL PAYMENTS TO TOBACCO ALLOTMENT HOLDERS, TOBACCO WORKERS, AND TOBACCO FARMERS AS COMPENSATION FOR LOSSES DUE TO THE FEDERAL TOBACCO SETTLEMENT.

☐ 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.

☐ 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 1248*
Committee Substitute Favorable 6/4/98
Proposed Committee Substitute H1248-PCS3142-LB2

Short Title: Exempt Tobacco Assistance Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM INCOME TAX FEDERAL PAYMENTS TO TOBACCO ALLOTMENT HOLDERS, TOBACCO WORKERS, TOBACCO WAREHOUSE OWNERS, AND TOBACCO FARMERS AS COMPENSATION FOR LOSSES DUE TO FEDERAL LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(17) The amount paid to the taxpayer by the federal government during the taxable year as reimbursement for:

a. Loss of tobacco quotas.

b. Any purpose provided by federal legislation specific to the tobacco industry, which compensates the taxpayer for harm done to the tobacco industry by legislation specific to the tobacco industry. This paragraph specifically includes compensation by such legislation to owners of tobacco warehouses."

Section 2. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(15) The amount paid to the taxpayer by the federal government during the taxable year for any of the following:

a. Reimbursement for loss of tobacco quotas.

b. Transition assistance for tobacco workers.
c. Higher education assistance grants for members of tobacco farm families granted because of legislation specific to the tobacco industry.
d. Any purpose provided by federal legislation specific to the tobacco industry, which compensates the taxpayer for harm done to the tobacco industry by legislation specific to the tobacco industry. This paragraph specifically includes compensation by such legislation to owners of tobacco warehouses."

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1356-CSRU-002
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1356
THIS IS A DRAFT 18-JUN-98 00:06:00
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Electronic Commerce Act. (Public)

Sponsors:

Referred to:

May 20, 1998

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC AGENCIES 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.

The General Assembly of North Carolina enacts:

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

"ARTICLE 11A.

"Electronic Commerce in Government.

"**§ 66-58.1. Title; purpose.**

This Article shall be known and may be cited as the Electronic Commerce Act. The purpose of this Article is to facilitate electronic commerce with public agencies and regulate the application of electronic signatures when used in commerce with public agencies.

"**§ 66-58.2. Definitions.**

The following definitions apply in this Article:

(1) 'Certification authority' means a person authorized by the Secretary to facilitate electronic commerce

by vouching for the relationship between a person or public agency and that person's or public agency's electronic signature.

(2) 'Electronic signature' means any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature.

(3) 'Person' means any individual, firm, partnership, corporation, or combination thereof of whatsoever form or character.

(4) 'Public agencies' means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(5) 'Secretary' means Secretary of State.

(6) 'Transaction' means an electronic transmission of data between a person and a public agency, or between public agencies, including, but not limited to, contracts, filings, and legally operative documents.

"§ 66-58.3. Use of electronic signatures.

(a) All public agencies may accept electronic signatures.

(b) Signatures that require attestation by a notary public may not be in the form of an electronic signature.

"§ 66-58.4. Validity of electronic signatures.

(a) An electronic signature contained in a transaction between a person and a public agency, or between public agencies, shall have the same force and effect as a manual signature provided all of the following requirements are met:

(1) The public agency involved in the transaction requests or requires the use of electronic signatures.

(2) The electronic signature contained in the transaction embodies all of the following attributes:

(a) It is unique to the person using it;

(b) It is capable of certification;

(c) It is under sole control of the person using it;

(d) It is linked to data in such a manner that if the data are changed, the electronic signature is invalidated; and

(e) It conforms to rules adopted by the Secretary pursuant to this Article.

(b) A transaction between a person and a public agency, or between public agencies, is not unenforceable, nor is it inadmissible into evidence, on the sole ground that the transaction is evidenced by an electronic record or that it has been signed with an electronic signature.

"**§ 66-58.5. Enforcement.**

(a) The Secretary may investigate complaints or other information indicating fraudulent or unlawful conduct that violates this Article or the rules promulgated thereunder.

(b) The Superior Court Division of the General Court of Justice has jurisdiction and authority upon application of the Secretary to enjoin or restrain violations of this Article.

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

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

"**§ 66-58.6. Civil penalty.**

The Secretary may assess a civil penalty of not more than one hundred thousand dollars ($100,000) against any certification authority that violates a provision of this Article or any rule promulgated thereunder. In determining the amount of a penalty under this subsection, the Secretary shall give due consideration to each of the following factors:

(1) The organizational size of the person cited;

(2) The good faith of the person cited;

(3) The gravity of the violation;

(4) The prior record of the violator in complying or failing to comply with this Article or a rule adopted pursuant to this Article; and

(5) The risk of harm caused by the violation.

Chapter 150B of the General Statutes governs the imposition of a civil penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Secretary or the Attorney General.

"**§ 66-58.7. Criminal penalty.**

(a) Any person who willfully violates any provision of this Article, or who willfully violates any rule or order under this Article, is guilty of a Class I felony.

(b) The Secretary shall provide such evidence as is available concerning criminal violations of this Article or of any rule or order promulgated hereunder to the proper district attorney, who may, with or without such a reference, institute appropriate criminal proceedings under this Article.

(c) Nothing in this Article limits the power of the State to punish any person for any conduct which constitutes a crime by statute or common law.

"**§ 66-58.8. Exemptions.**

This Article shall not apply to any of the following:

(a) Electronic signatures and facsimile signatures that are otherwise allowed by law.

(b) The execution of documents filed with, issued, or entered by a court of the General Court of Justice.

(c) Transactions where a public agency is not a party.

"**§ 66-58.9. Rulemaking.**

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

(1) Definitions, including but not limited to more technical definitions of 'certification authority' and 'electronic signature';

(2) The creation, accreditation, bonding, licensing, operation, regulation, and sanctioning of certification authorities;

(3) The imposition of licensing and renewal fees in amounts not to exceed five thousand ($5,000) dollars per year; and

(4) The imposition of civil monetary penalties for noncompliance with this Article or the rules promulgated thereunder.

(b) Notwithstanding G.S. 150B-21.1(a), the Secretary may adopt temporary rules to implement the certification authority technology provisions of this Article using the procedure for adoption of temporary rules under G.S. 150B-21.1(a2).

(c) The Secretary shall deposit licensing and renewal fees in the General Fund.

Section 2. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules to implement the certification technology provisions of Article 11A

of Chapter 66 of the General Statutes. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;

(2) Accept oral and written comments on the proposed temporary rule; and

(3) Hold at least one public hearing on the proposed temporary rule. When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision this Chapter, the Codifer of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

Section 3. In developing initial rules pursuant to this act, the Secretary shall consider national standards for ensuring the integrity of electronic signatures and shall seek the advice of public and private agencies, including but not limited to the Information Resource Management Commission. Before adoption of the rules, the Secretary shall hold at least one public hearing to receive comments.

Section 4. The Legislative Research Commission shall study whether the scope of Article 11A of Chapter 66 of the General Statutes should be expanded to include electronic commerce not involving a public agency. The Commission shall report its recommendations to the 1999 General Assembly.

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

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

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.

The General Assembly of North Carolina enacts:

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

"ARTICLE 11A.

"Electronic Commerce in Government.

"**§ 66-58.1. Title; purpose.**

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

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

"**§ 66-58.2. Definitions.**

The following definitions apply in this Article:

(1) 'Certification authority' means a person authorized by the Secretary of State to facilitate electronic commerce by vouching for the connection between a person and that person's electronic signature.

(2) 'Electronic signature' means any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature.

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

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

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

(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 pursuant to this Article.

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

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

"**§ 66-58.4. Rulemaking.**

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

(1) Definitions, including but not limited to more technical definitions of 'certification authority' and 'electronic signature';

(2) The creation, accreditation, licensing, operation, regulation, and sanctioning of certification authorities;

(3) The imposition of licensing and renewal fees in amounts reasonably related to the cost of administering this Article; and

(4) The imposition of civil monetary penalties for noncompliance with this Article or the rules promulgated thereunder.

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

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

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

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

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

(1) The organizational size of the person cited;

(2) The good faith of the person cited;

(3) The gravity of the violation;

(4) The prior record of the violator in complying or failing to comply with this Article or a rule adopted pursuant to this Article; and

(5) The risk of harm to the public or to individuals caused by the violation.

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

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

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

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

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

"**§ 66-58.7. Exemptions.**

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1356

SHORT TITLE: Electronic Commerce Act

SPONSOR(S): Representatives Reynolds, Baker, Brawley, Clary, Cole, Dickson, Earle, Eddins, Gray, Hurley, McComas, Rayfield, Sexton, Shubert, Tolson, Weatherly, and G. Wilson

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
EXPENDITURES	$75,000	$75,000	$75,000	$75,000	$75,000

POSITIONS: 1

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State

EFFECTIVE DATE: Upon Passage.

BILL SUMMARY:
Amends Section 1, Chapter 66 of the General Statutes by adding Article 11A. The new Article facilitates electronic commerce with and by public entities of the State of North Carolina by recognizing the validity of electronic signatures. Article 11A further authorizes the Secretary of State to regulate electronic signatures and certification authorities, and to assess a civil penalty (up to $100,000) against any person who violates a provision of the Article.

ASSUMPTIONS AND METHODOLOGY:
The bill requires the Department of the Secretary of State to perform a new regulatory function in a fluid and relatively complex technological milieu. The Department of the Secretary of State requests an additional position to perform the work required by the new function. The function

requires a blend of legal/regulatory and technical skills. The individual selected for the position would be required to participate in establishing rules for the use of electronic signatures. Further, the individual would be required to evaluate and monitor certification authorities. The Department requests $75,000 for the new position.

Public-sector experience with the use of electronic signatures remains limited. As a result, a reliable estimate of the potential revenue from penalties assessed (as authorized by this bill) does not exist at this time.

TECHNICAL CONSIDERATIONS:
None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Dwayne Pinkney
APPROVED BY:
DATE: June 8, 1998

EXPLANATION OF HOUSE BILL 1356:
Electronic Commerce Act

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 8, 1998
SPONSOR: Representative Reynolds

House Bill 1356 enacts a new article in the Commerce and Business Chapter of the General Statutes called the Electronic Commerce Act, effective when it becomes law. House Bill 1356 was recommended by the Legislative Research Commission Committee on Information and Technology, and has been given a favorable report in House Judiciary I.

The purpose of this Act is to authorize the use and acceptance of electronic signatures by all State agencies, boards, commissions or institutions and by local political subdivisions including cities, counties, school districts or public service districts, when one of these public entities is a party to a contract, transaction, or filing. An "electronic signature" is defined as "any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature." An electronic signature is valid if the public entity requesting or requiring the signature accepts electronic signatures and if the signature meets the following requirements:

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

The Act gives the Secretary of State authority to promulgate rules to carry out 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 rules must be adopted by October 30, 1998, and at least one public hearing is required before their adoption. The 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 Act authorizes the Secretary of State to assess a civil penalty of not more than $100,000 against a person who violates the Act or adopted rule. The civil penalties are deposited in the General Fund. The courts also have the authority and jurisdiction to enjoin or restrain violations of the Act.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 1356-CSRV-002 DATE 6-23-98

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

Rep.) Dickson
)
Sen.)

moves to amend the bill on page 5, line 25

by DELETING THE WORD "~~COMMERCE~~ COMMISSION." AND SUBSTITUTING THE WORDS "~~COMMERCE~~ COMMISSION AND NORTH CAROLINA ELECTRONICS AND INFORMATION TECHNOLOGIES ASSOCIATION."

SIGNED W Dickson

ADOPTED X FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1356

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1356-ARU-002

Date_____,1998

Comm. Sub. [YES]
Amends Title []
S1356-CSRU-002

Rep. ~~Nesbitt~~ Hackney

moves to amend the bill on page 3, lines 26 and 27,
by rewriting the lines to read:
"The Secretary may assess a civil penalty of not more than five thousand dollars ($5,000) per violation against any certification".

SIGNED Hackney
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1356

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1356-ARU-004

Date_____,1998

Comm. Sub. [YES]
Amends Title []
S1356-CSRU-002

Rep._____

moves to amend the bill on page 2, lines 24 and 25, by inserting between the lines a new statutory section to read:

"**§ 66-58.3. Certification authority licensing.**

All persons acting as a certification authority with respect to transactions under this Article shall be licensed by the Secretary prior to representing themselves or acting as a certification authority under this Article. Upon payment of the required fees, a certification authority meeting the standards adopted by the Secretary by rule shall be licensed for a period of one year. Licenses of certification authorities complying with the standards adopted by the Secretary may be renewed for additional one year terms upon payment of the required renewal fee."; and

by renumbering the remaining statutory sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1356

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1356-ARU-001

Page 1 of __

Date_____,1998

Comm. Sub. [YES]
Amends Title []
S1356-CSRU-002

Rep. Hackney

moves to amend the bill on page 5, line 33, as amended by Rep. Hackney's amendment #1,
by rewriting the line to read:
"Section 5. Section 1 of this act becomes effective January 1, 1999. The remainder of this act is effective when it becomes law. The Secretary of State may adopt rules prior to January 1, 1999, to become effective on or after January 1, 1999, to implement Section 1 of this act.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1356

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1356-ARU-003A

Date_____,1998

Comm. Sub. [YES]
Amends Title []
S1356-CSRU-002

Rep. Hackney

moves to amend the bill on page 4, line 17,
by adding the following sentence to the end of the line to read:
"However, a document or transaction validly executed under this Article is not rendered invalid because it is filed with, or attached to, a document issued or entered by a court of the General Court of Justice.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED X FAILED _____ TABLED _____

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ 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.

☐ 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 1356*
Proposed Committee Substitute H1356-PCS9012-RU003

Short Title: Electronic Commerce Act. (Public)

Sponsors:

Referred to:

May 20, 1998

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC AGENCIES 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.

The General Assembly of North Carolina enacts:

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

"ARTICLE 11A.

"Electronic Commerce in Government.

"**§ 66-58.1. Title; purpose.**

This Article shall be known and may be cited as the Electronic Commerce Act. The purpose of this Article is to facilitate electronic commerce with public agencies and regulate the application of electronic signatures when used in commerce with public agencies.

"**§ 66-58.2. Definitions.**

The following definitions apply in this Article:

(1) 'Certification authority' means a person authorized by the Secretary to facilitate electronic commerce by vouching for the relationship between a person or public agency and that person's or public agency's electronic signature.

(2) 'Electronic signature' means any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature.

(3) 'Person' means any individual, firm, partnership, corporation, or combination thereof of whatsoever form or character.

(4) 'Public agencies' means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(5) 'Secretary' means Secretary of State.

(6) 'Transaction' means an electronic transmission of data between a person and a public agency, or between public agencies, including, but not limited to, contracts, filings, and legally operative documents.

"§ 66-58.3. Certification authority licensing.

All persons acting as a certification authority with respect to transactions under this Article shall be licensed by the Secretary prior to representing themselves or acting as a certification authority under this Article. Upon payment of the required fees, a certification authority meeting the standards adopted by the Secretary by rule shall be licensed for a period of one year. Licenses of certification authorities complying with the standards adopted by the Secretary may be renewed for additional one-year terms upon payment of the required renewal fee.

"§ 66-58.4. Use of electronic signatures.

(a) All public agencies may accept electronic signatures.

(b) Signatures that require attestation by a notary public may not be in the form of an electronic signature.

"§ 66-58.5. Validity of electronic signatures.

(a) An electronic signature contained in a transaction between a person and a public agency, or between public agencies, shall have the same force and effect as a manual signature provided all of the following requirements are met:

(1) The public agency involved in the transaction requests or requires the use of electronic signatures.

(2) The electronic signature contained in the transaction embodies all of the following attributes:

a. It is unique to the person using it;

b. It is capable of certification;

c. It is under sole control of the person using it;

d. It is linked to data in such a manner that if the data are changed, the electronic signature is invalidated; and

e. It conforms to rules adopted by the Secretary pursuant to this Article.

(b) A transaction between a person and a public agency, or between public agencies, is not unenforceable, nor is it inadmissible into evidence, on the sole ground that the transaction is evidenced by an electronic record or that it has been signed with an electronic signature.

"§ 66-58.6. Enforcement.

(a) The Secretary may investigate complaints or other information indicating fraudulent or unlawful conduct that violates this Article or the rules promulgated thereunder.

(b) The Superior Court Division of the General Court of Justice has jurisdiction and authority upon application of the Secretary to enjoin or restrain violations of this Article.

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

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

"§ 66-58.7. Civil penalty.

The Secretary may assess a civil penalty of not more than five thousand dollars ($5,000) per violation against any certification authority that violates a provision of this Article or any rule promulgated thereunder. In determining the amount of a penalty under this section, the Secretary shall give due consideration to each of the following factors:

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

Chapter 150B of the General Statutes governs the imposition of a civil penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Secretary or the Attorney General.

"§ 66-58.8. Criminal penalty.

(a) Any person who willfully violates any provision of this Article, or who willfully violates any rule or order under this Article, with intent to defraud, is guilty of a Class I felony.

(b) The Secretary shall provide such evidence as is available concerning criminal violations of this Article or of any rule or order promulgated hereunder to the proper district attorney, who may, with or without such a reference, institute appropriate criminal proceedings under this Article.

(c) Nothing in this Article limits the power of the State to punish any person for any conduct which constitutes a crime by statute or common law.

"§ 66-58.9. Exemptions.

This Article shall not apply to any of the following:

(1) Electronic signatures and facsimile signatures that are otherwise allowed by law.

(2) The execution of documents filed with, issued, or entered by a court of the General Court of Justice. However, a document or transaction validly executed under this Article is not rendered invalid because it is filed with, or attached to, a document issued or entered by a court of the General Court of Justice.

(3) Transactions where a public agency is not a party.

"**§ 66-58.10. Rule making.**

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

(1) Definitions, including, but not limited to, more technical definitions of 'certification authority' and 'electronic signature';

(2) The creation, accreditation, bonding, licensing, operation, regulation, and sanctioning of certification authorities;

(3) The imposition of licensing and renewal fees in amounts not to exceed five thousand dollars ($5,000) per year; and

(4) The imposition of civil monetary penalties for noncompliance with this Article or the rules promulgated thereunder.

(b) Notwithstanding G.S. 150B-21.1(a), the Secretary may adopt temporary rules to implement the certification authority technology provisions of this Article using the procedure for adoption of temporary rules under G.S. 150B-21.1(a2).

(c) The Secretary shall deposit licensing and renewal fees in the General Fund."

Section 2. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;

(2) Accept oral and written comments on the proposed temporary rule; and

(3) Hold at least one public hearing on the proposed temporary rule.

When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifer of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

Section 3. In developing initial rules pursuant to this act, the Secretary shall consider national standards for ensuring the integrity of electronic signatures and shall seek the advice of public and private agencies, including, but not limited to, the Information Resource Management Commission and the North Carolina Electronics and Information Technologies Association. Before adoption of the rules, the Secretary shall hold at least one public hearing to receive comments.

Section 4. The Legislative Research Commission shall study whether the scope of Article 11A of Chapter 66 of the General Statutes should be expanded to include electronic commerce not involving a public agency. The Commission shall report its recommendations to the 1999 General Assembly.

Section 5. Section 1 of this act becomes effective January 1, 1999. The remainder of this act is effective when it becomes law. The Secretary of State may adopt rules prior to January 1, 1999, to become effective on or after January 1, 1999, to implement Section 1 of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1229
Second Edition Engrossed 5/27/98

Short Title: Abolish Inheritance Tax Waivers. (Public)

Sponsors: Senators Kerr, Cochrane, Dalton, Hartsell, Hoyle, and Webster.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO ABOLISH TAX WAIVERS FOR THE TRANSFER OR DELIVERANCE OF A DECEDENT'S PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2.1 reads as rewritten:

"**§ 105-2.1. ~~Internal Revenue Code definition.~~ Definitions.**

~~As used in this Article, the term "Code" has the same meaning as in G.S. 105-228.90.~~ The following definitions apply in this Article:

(1) Code. -- Defined in G.S. 105-228.90.

(2) Collector. -- Defined in G.S. 28A-1-1.

(3) Personal representative. -- Defined in G.S. 28A-1-1."

Section 2. G.S. 105-11 is repealed.

Section 3. G.S. 105-11.1 is repealed.

Section 4. G.S. 105-12 is repealed.

Section 5. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-13.1. Notices to Secretary of certain payments.**

(a) Life Insurance Policy. -- When a company pays the proceeds of a life insurance policy as a result of the death of an individual who owned the policy and was the named insured under the policy, the company must notify the Secretary of the payment on a form approved by the Secretary unless one of the following applies:

(1) The payment is to the surviving spouse.

(2) The payment is to a Class A beneficiary, as described in G.S. 105-4(a), and the proceeds of the policy do not exceed one hundred thousand dollars ($100,000).

(b) Annuity and IRA. -- When a company pays the initial payment of an annuity or the initial distribution of an IRA as a result of the death of the annuitant or owner of the IRA, the company must notify the Secretary of the payment or distribution on a form approved by the Secretary unless one of the following applies:

(1) The payment or distribution is to the surviving spouse.

(2) The payment or distribution is to a Class A beneficiary, as described in G.S. 105-4(a), and the total amount to be paid under the annuity or distributed under the IRA does not exceed one hundred thousand dollars ($100,000)."

Section 6. G.S. 105-20 reads as rewritten:

"**§ 105-20. ~~Legacy charged upon real estate, heir or devisee to deduct and pay tax; limitation; Inheritance or Estate Tax Waiver.~~ Taxes are a lien on real property in an estate.**

~~Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee, shall deduct the tax therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator or the Secretary of Revenue, and the same shall remain a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decrees of the court in the same manner as the payment of such legacy may be enforced: Provided, that all taxes imposed by this Article shall be a lien upon the real and personal property of the estate on which the tax is imposed or upon the proceeds arising from the sale of such property from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the State: Provided further, that no lien for inheritance or estate taxes shall attach or affect the land after 10 years from the date of death of the decedent: Provided further, that no taxes imposed by this Article shall be a lien upon real property that is released by an Inheritance or Estate Tax Waiver issued by the Secretary of Revenue. An Inheritance or Estate Tax Waiver issued by the Secretary of Revenue and bearing the signature or official facsimile signature of the Secretary of Revenue covering real property may be registered in the office of the Register of Deeds of the county or counties where the real estate described in the waiver is located. No formalities as to acknowledgement, probate, or approval by any officer shall be required as a condition to such registration. An Inheritance or Estate Tax Waiver so registered shall be conclusive evidence that the real property described in such waiver is not subject to the lien of any taxes imposed by this Article.~~

The taxes imposed by this Article on the transfer of real or personal property are a lien on the real property in an estate and on the proceeds arising from the sale of real property. The lien is created at the date of death of the decedent and continues until the tax is paid, 10 years have elapsed since the date of the decedent's death, or the lien is released. A lien is released when the Secretary issues a tax waiver for the lien, the Secretary issues an inheritance tax certificate, or the personal representative files

a tax certification with the clerk of superior court. A tax waiver may be filed in the office of the register of deeds of each county where the property is located. No formalities as to acknowledgment, probate, or approval by any officer are required as a condition to filing. The filing of a tax waiver is conclusive evidence that the real property described in the waiver is not subject to a lien for taxes imposed by this Article."

Section 7. G.S. 105-24 reads as rewritten:

"**§ 105-24. ~~Tax waiver required for transfer of decedents' property in some cases; inventory of lock boxes; withdrawal of bank deposits, etc., payable to either husband or wife or survivor.~~ Inventory of safe-deposit boxes.**

~~(a) No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest assessed under this Article on property transferred by the decedent; but the Secretary of Revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Securities whose declaration date is after the decedent's death, or interest that accrues after the decedent's death on money on deposit at a bank, savings and loan association, credit union, or other corporation, however, may be transferred or delivered without retaining a portion of the property for the payment of taxes or interest and without obtaining the written consent of the Secretary to the delivery or transfer. Provided: The clerk of superior court of the resident county of a decedent may authorize in writing one or more banks, safe deposit companies, trust companies or any other institutions to transfer to the properly qualified representative of the estate any funds on deposit in the name of the decedent or the decedent and one or more persons when the aggregate amount of all such deposits in all such institutions is two thousand dollars ($2,000) or less, and when such deposit or deposits compose the total cash assets of the estate. Such authorization shall have the same force and effect as when issued in writing by the Secretary of Revenue.~~

(b) Except as provided in subsection (c) of this section, every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting ~~lock~~ safe-deposit boxes for the safekeeping of valuable papers and personal effects, or having in their possession or supervision in such ~~lock~~ safe-deposit boxes such valuable papers or personal effects shall, upon the death of any person using or having access to such ~~lock~~ safe-deposit box, as a condition precedent to the opening of such ~~lock~~ safe-deposit box by the ~~executor, administrator,~~ personal ~~representative lessee~~ representative, collector, lessee, or cotenant of such deceased person, require the presence of the clerk of the superior

court of the county in which ~~such lock~~ the box is located. It shall be the duty of the clerk of the superior court, or his representative, in the presence of ~~an officer or~~ a representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of ~~such lock~~ the box and to furnish a copy of such inventory ~~to the Secretary of Revenue,~~ to the ~~executor, administrator,~~ personal representative, collector, lessee, or cotenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person, or persons having possession of ~~such lock~~ the safe-deposit box; provided, that for ~~lock~~ boxes to which decedent merely had access the inventory shall include only assets in which the decedent has or had an interest. ~~Immediately after~~ After the clerk of superior court has made an inventory of the contents of the ~~lock~~ safe-deposit box, the safe deposit company, trust company, corporation, bank or other institution, or person shall, upon request, release to the ~~lessee~~ personal representative, collector, lessee, or cotenant of the ~~lock~~ box ~~any life insurance policy stored in the lock box for delivery to the beneficiary named in the policy. No other contents of the lock box may be released except Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the Secretary of Revenue a notice, in such form as the Secretary of Revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply.~~ the contents of the box.

(c) Notwithstanding the provisions of subsection (b) of this section, if the ~~properly qualified personal representative of an estate~~ personal representative, collector, lessee, or cotenant believes upon reliable information that a ~~lock~~ safe-deposit box to which the decedent had access is empty, ~~the personal representative~~ that person may so certify to the clerk of superior court of the county in which the ~~lock~~ box is located. Upon receipt of this certificate, the clerk may authorize in writing the personal ~~representative or the personal representative's named agent~~ representative, collector, lessee, or cotenant to open the ~~lock~~ box outside of the clerk's presence. The ~~personal representative or the personal representative's agent~~ authorized person shall open the ~~lock~~ box in the presence of ~~an officer or~~ a representative of the institution having control or custody of the ~~lock~~ box, and ~~the personal representative or the personal representative's agent~~ shall certify to the clerk whether the ~~lock~~ box is or is not empty. The certificate shall include the name of the ~~officer or~~ representative of the institution who was present at the time the ~~lock~~ box was opened and shall be signed by the ~~officer or~~ representative to indicate that ~~he or she~~ the representative was present. ~~If the lock box is empty, no tax waiver will be required from, and no notice given to, the Secretary of Revenue.~~ If the ~~lock~~ safe-deposit box is not empty, the ~~officer or~~ representative of the institution shall close the ~~lock~~ box at once and the ~~lock~~ box may be reopened only in accordance with subsection (b) of this section.

~~(d) Notwithstanding any of the provisions of this section, in any case where a bank deposit has been heretofore made or is hereafter made, or where savings and loan stock has heretofore been issued or is hereafter issued, in the names of two or more persons and payable to either or the survivor or survivors of them, such bank or~~

~~savings and loan association may, upon the death of either of such persons, allow the person or persons entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and the balance thereof shall be retained by the bank or savings and loan association to cover any taxes that may thereafter be assessed under this Article. When it is ascertained that there is no liability of such deposit or stock for taxes under this Article, the Secretary of Revenue shall furnish the bank or savings and loan association his written consent for the payment of the retained percentage to the person or persons entitled thereto by law; and the Secretary of Revenue may furnish such written consent to the bank or savings and loan association upon the qualification of a personal representative of the deceased. If the person entitled to funds in an account is the surviving spouse and the account is a joint account of the surviving spouse and the decedent with right of survivorship, no tax waiver is required from the Secretary of Revenue to release the funds in the account.~~

(e) Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this Article on property transferred by the decedent. In any action brought under this provision it shall be a sufficient defense that the delivery or transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without knowledge of circumstances sufficient to place the defendant on inquiry."

Section 8. G.S. 105-30 is repealed.

Section 9. G.S. 105-31 reads as rewritten:

"**§ 105-31. ~~Additional remedies for enforcement of tax.~~ Action to collect tax due.**

~~In addition to all other remedies which may now exist under the law, or may hereafter be established, for the collection of the taxes imposed by the preceding sections of this Article, the tax so imposed shall be a lien upon all of the property and upon all of the estate, with respect to which the taxes are levied, as well as collectible out of any other property, resort to which may be had for their payment; and the said taxes shall constitute a debt, which may be recovered in an action brought by the Secretary of Revenue in any court of competent jurisdiction in this State, and/or in any court having jurisdiction of actions of debt in any state of the United States, and/or in any court of the United States against an administrator, executor, trustee, or personal representative, and/or any person, corporation, or concern having in hand any property, funds, or assets of any nature, with respect to which such tax has been imposed. No title or interest to such estate, funds, assets, or property shall pass, and no disposition thereof shall be made by any person claiming an interest therein until said taxes have been fully paid or until the Secretary of Revenue has released such property by the issuance of an Inheritance or Estate Tax Waiver.~~ Taxes payable under this Article are a debt that may be recovered in an action brought by the Secretary against the personal representative or against any other person having in hand any property with respect to which the taxes have been imposed."

Section 10. G.S. 25-4-405(c) reads as rewritten:

"(c) A transaction, although subject to this Article, is also subject to G.S. ~~105-24,~~ 41-2.1, 53-146.1, 54-109.58, and 54B-129, and in case of conflict between the provisions of this section and either of those sections, the provisions of those sections control."

Section 11. G.S. 41-2.1(f) reads as rewritten:

"(f) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24 relating to the administration of the inheritance laws or any other~~ provisions of the law relating to inheritance taxes."

Section 12. G.S. 41-2.2(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-2, 105-11, and 105-24, relating to the administration of the inheritance tax laws, or any other~~ provisions of the law relating to inheritance taxes."

Section 13. G.S. 53-146.1(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the bank in its relationship with ~~such~~ joint owners of deposit ~~accounts as herein provided.~~ accounts."

Section 14. G.S. 53-146.2(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate taxes."

Section 15. G.S. 54-109.58(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the credit union in its relationship with ~~such~~ joint owners of ~~accounts as herein provided.~~ accounts."

Section 16. G.S. 54B-129(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of law relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the association in its relationships with ~~such~~ joint owners of deposit ~~accounts as herein provided.~~ accounts."

Section 17. G.S. 54B-130(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate taxes."

Section 18. G.S. 54C-165(b) reads as rewritten:

"(b) ~~Nothing in this section is construed to~~ This section does not repeal or modify any ~~provision of G.S. 105-24 relating to the administration of the estate tax laws of this State or any other~~ law relating to estate taxes. This section ~~shall regulate, govern, and protect~~ regulates and protects the savings bank in its relationships with the joint owners of deposit accounts."

Section 19. G.S. 54C-166(d) reads as rewritten:

"(d) ~~Nothing in this section is construed to~~ This section does not repeal or modify any ~~provision of G.S. 105-24 relating to the administration of estate tax laws of this State or any other~~ law relating to estate taxes."

Section 20. This act becomes effective July 1, 1998, and applies to estates of decedents who die on or after that date.

EXPLANATION OF SENATE BILL 1229 (2nd Ed):
Abolish Inheritance Tax Waivers

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 16, 1998
SPONSOR: Senator Kerr

Senate Bill 1229 is a recommendation of the Revenue Laws Study Committee. The Second Edition differs from the original bill in that the effective date is moved back from October 1, 1998, to July 1, 1998.

Current Law

G.S. 105-24 currently requires that when a person dies, the Department of Revenue must be notified of any accounts, stocks, and bonds in the name of the decedent and of the contents in decedent's safe-deposit box. The Department then issues inheritance tax waivers authorizing the bank or financial institution in possession of the decedent's property to transfer or release the property. Accounts held by the decedent and spouse with right of survivorship do not require a waiver before transfer.

Senate Bill 1229

The Bill deletes all language in G.S. 105-24 requiring the inheritance tax waivers, and repeals sections of the Inheritance Tax Article regarding penalties for failure to obtain waivers and forms required for the waivers. The Bill retains the requirement that the Secretary of Revenue must be notified of payments of proceeds of a life insurance policy when the payments are the result of the death of the individual who owned the policy and was the named insured under the policy. Notification is also required of the initial payment of an annuity or initial distribution of an IRA when the payment or distribution is the result of the death of the annuitant or owner of the IRA. However, notification is not required in the following instances:

1. When the payment or distribution is to a surviving spouse.
2. When the payment or distribution is to a class A beneficiary and the proceeds of the policy or the total amount paid under the annuity or distributed under the IRA do not exceed $100,000.

Senate Bill 1229 clarifies that inheritance taxes are a lien on real property in the decedent's estate and makes technical changes to the Inheritance Tax Article.

The Department of Revenue supports the abolishment of inheritance tax waivers, because the lien on the decedent's property is adequate security for payment of inheritance taxes. Also, most estates do not have to pay inheritance taxes. The abolishment of tax waivers also relieves the burden on the public to apply for and receive tax waivers when administering a decedent's estate. The Department feels that the tax waiver requirement creates a burden to the public that is much greater than any benefit derived.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1229

SHORT TITLE: Abolish Inheritance Tax Waivers

SPONSOR(S): Senators Kerr, Cochrane, Dalton, Hartsell, Hoyle, and Webster.

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	No expected General Fund impact				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Inheritance and Estate Tax Divisions of the Department of Revenue.

EFFECTIVE DATE: October 1, 1998

BILL SUMMARY: When a person dies, current law requires that the Department of Revenue be notified of any accounts, stocks, and bonds held in the name of the decedent. They must also be informed of the contents in the decedent's lock or safe-deposit box. The Department then issues inheritance tax waivers authorizing the bank or financial institution in possession of the decedent's property to transfer or release the property. The bill deletes all language in G.S. 105-24 requiring inheritance tax waivers. The bill retains the requirement that the Secretary of Revenue be notified of payments from certain life insurance policies, annuities, and IRAs. Notification is not required if the payment or distribution is to a surviving spouse, or if a payment of less than $100,00 is made to a Class A beneficiary. This bill is a recommendation of the Revenue Laws Study Committee.

ASSUMPTIONS AND METHODOLOGY: No revenue impact is expected as a result of this proposal.

FISCAL RESEARCH DIVISION
733-4910

PREPARED BY: Warren Plonk and Linda Struyk Millsaps
APPROVED BY: Tom Covington

DATE: May 26, 1998

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
S.B. 1229 A BILL TO BE ENTITLED AN ACT TO ABOLISH TAX WAIVERS FOR THE TRANSFER OR DELIVERANCE OF A DECEDENT'S PROPERTY.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1327
Finance Committee Substitute Adopted 6/10/98
Proposed House Finance Committee Substitute S1327-PCS3627-RB

Short Title: No Tax on Gas Cities. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES AND TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5E.

"Piped Natural Gas Tax.

"**§ 105-187.40. Definitions.**

The definitions in G.S. 105-228.90 and the following definitions apply in this Article:

(1) Gas city. -- A city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

(2) Local distribution company. -- A natural gas company to whom the North Carolina Utilities Commission has issued a franchise under Chapter 62 of the General Statutes to serve an area of this State.

(3) Premises. -- Defined in G.S. 62-110.2. When applying the definition of premises to this Article, electric service is to be construed as piped natural gas service.

(4) Sales customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by the seller of the gas.

(5) Transportation customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by a person who is not the seller of the gas.

"**§ 105-187.41. Tax imposed on piped natural gas.**

(a) Scope. -- An excise tax is imposed on piped natural gas received for consumption in this State. This tax is imposed in lieu of a sales and use tax and a percentage gross receipts tax on piped natural gas.

(b) Rate. -- The tax rate is set in the table below. The tax rate is based on monthly therm volumes of piped natural gas received by the end-user of the gas. If an end-user receives piped natural gas that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices, unless the devices are located on the same premises and are part of the same billing account. In that circumstance, the tax is calculated on the total volume metered through the two or more separate measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$.0470
201 to 15,000	.0350
15,001 to 60,000	.0240
60,001 to 500,000	.0200
Over 500,000	.0015

(c) Gas City Exemption. -- The tax imposed by this section does not apply to piped natural gas received by a gas city for consumption by that city or to piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

"**§ 105-187.42. Liability for the tax.**

The excise tax imposed by this section on piped natural gas is payable as follows:

(1) For piped natural gas delivered by a local distribution company to a sales or transportation customer, the tax is payable by the local distribution company.

(2) For piped natural gas delivered by a person who is not a local distribution company to a sales or transportation customer, the tax is payable by that person.

(3) For piped natural gas received by a person by means of direct access to an interstate gas pipeline for consumption by that person, the tax is payable by that person.

"**§ 105-187.43. Payment of the tax.**

(a) Monthly Return. -- The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is

delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) Small Underpayments. -- A person is not subject to interest on or penalties for an underpayment of a monthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.

"§ 105-187.44. Distribution of part of tax proceeds to cities.

(a) City Information. -- A monthly return filed under this Article must indicate the amount of tax attributable to the following: if a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city:

(1) Piped natural gas delivered during the month to sales or transportation customers in each city in the State.

(2) Piped natural gas received during the month in each city in the State by persons who have direct access to an interstate gas pipeline and who receive the gas for their own consumption.

(b) Distribution. -- Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section.

"§ 105-187.45. Information exchange and information returns.

(a) Utilities Information. -- The North Carolina Utilities Commission or the Public Staff of that Commission must give the Secretary a list of the entities that receive piped natural gas from an interstate pipeline and any other information available to the Commission that the Secretary asks for in administering the tax imposed by this Article.

(b) Information Return. -- The Secretary may require the operator of an interstate pipeline to report the amount of piped natural gas taken from the pipeline in this State, the persons that received the gas, and the volume received by each person.

"§ 105-187.46. Records and audits.

(a) Records. -- A person who is required to file a return under this Article must keep a record of all documents used to determine information provided in the return. The records must be kept for three years after the due date of the return to which the records apply.

(b) Audits. -- The Secretary may audit a person who is required to file a return under this Article."

Section 2. G.S. 105-116 reads as rewritten:

"§ 105-116. Franchise or privilege tax on electric power, ~~natural gas,~~ water, and sewerage companies.

(a) Tax. -- An annual franchise or privilege tax is imposed on the following:

(1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.

~~(2) A natural gas company engaged in the business of furnishing piped natural gas.~~

~~(2a) A regional natural gas district created under Article 28 of Chapter 160A of the General Statutes.~~

(3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.

(4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. ~~The tax on a natural gas company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing piped natural gas.~~ The tax on a regional natural gas district is three and twenty-two hundredths percent (3.22%) of the district's taxable gross receipts from the furnishing of piped natural gas. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Report and Payment. -- The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. An electric power ~~company, a natural gas company, or a regional natural gas district~~ company shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. A taxpayer is not subject to interest on or penalties for an underpayment of a monthly amount due if the taxpayer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files. A water company or a public sewerage company shall pay tax quarterly when filing a report.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A taxpayer shall submit a report on a form provided by the Secretary. The report shall include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

(1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under ~~G.S. Chapter 159B~~ Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power ~~company, a natural gas company, or a regional natural gas district,~~ company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a).

A taxpayer ~~shall~~ must report its gross receipts on an accrual basis. If a taxpayer's report does not state the taxpayer's taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the taxpayer's taxable gross receipts to the city.

~~(e) Gas Special Charges. -- Gross receipts of a natural gas company do not include the following:~~

~~(1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.~~

~~(2) Natural gas expansion surcharges imposed under G.S. 62-158.~~

(d) Distribution. -- Part of the taxes imposed by this section on electric power companies, natural gas companies, and regional natural gas districts is distributed to cities under G.S. 105-116.1.

(e) Local Tax. -- So long as there is a distribution to cities from the tax imposed by this section, no city shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. ~~If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment.~~

~~(f) Gas City Exemption. -- The tax imposed by this section does not apply to the following cities that operate their own piped natural gas systems: Bessemer City, Kings Mountain, Lexington, Shelby, Greenville, Monroe, Rocky Mount, and Wilson.~~"

Section 3. G.S. 105-116.1 reads as rewritten:

"**§ 105-116.1. Distribution of gross receipts taxes to cities.**

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

(1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power ~~company, a natural gas company, a regional natural gas district,~~ company and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) Distribution. -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric power ~~companies, natural gas companies, regional natural gas districts,~~ companies and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.

(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsection (c) of this section. This amount is the total hold-harmless adjustment.

(2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their

percentage distribution amount minus one-fourth of their freeze deduction.

(3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

(4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 4. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means an electric power ~~company, a gas company, a regional naturalgas district,~~ company or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. ~~105-120(e)~~ 105-120(e), or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

(1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

(1a) The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser. The maximum tax is three hundred dollars ($300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.

(1b) The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article.

(1c) The rate of one percent (1%) applies to the sales price of the following articles:

a. Horses or mules by whomsoever sold.

b. Semen to be used in the artificial insemination of animals.

c. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to farmers to be used by them for any farm purposes other than preparing food, heating ~~dwellings~~ dwellings, and other household purposes. The quantity of

fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed ~~herein.~~ by this subdivision.

d. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.

e. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

(1d) The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars ($80.00) per article.

a. Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under this section.

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or

which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term 'manufacturing industries and plants' does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.

f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.

h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached,

and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.

(1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity ~~and piped natural gas~~ described in this subdivision and measured by a separate meter or another separate device:

a. Sales of electricity ~~and piped natural gas~~ to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

b. Sales of electricity ~~and piped natural gas~~ to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity ~~and gas~~ to be used for residential heating purposes. The quantity of electricity ~~or gas~~ purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

c. Sales of electricity ~~and piped natural gas~~ to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

(2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents

property shall also collect the tax imposed by this section on the separate retail sale of the property.

(3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term 'persons who rent to transients' means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including 'real estate brokers' as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

(4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.

(4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of ~~electricity, piped natural gas,~~ electricity or local telecommunications service as defined by G.S. 105-120(e), other than sales of electricity ~~or piped natural gas~~ subject to tax under another subdivision in this section. ~~Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158.~~ A person who operates a utility is considered a retailer under this Article.

(4b) A person who sells tangible personal property at a flea market, other than the person's own household personal property, is

considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the flea market. A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term 'flea market' means a place where space is rented to a person for the purpose of selling tangible personal property.

(4c) The rate of six and one-half percent (6 1/2%) applies to the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate from and terminate in the State and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides these services is considered a retailer under this Article. This subdivision does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

(5) **(Effective until July 1, 1998)** The rate of three percent (3%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

(5) **(Effective July 1, 1998)** The rate of two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 6. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Piped natural gas. -- This item is exempt because it is taxed under Article 5E of this Chapter."

Section 7. G.S. 105-164.20 reads as rewritten:

"**§ 105-164.20. Cash or accrual basis of reporting.**

Any retailer, except a utility, ~~taxable under this Article having both cash and credit sales~~ may report ~~such~~ sales on either the cash or accrual basis of accounting upon making application to the Secretary for permission to use ~~such~~ the basis ~~of reporting under such rules and regulations as shall be promulgated from time to time by the Secretary. Such permission shall continue in force and effect unless revoked by the Secretary but he may grant written permission to any such taxpayer upon application therefor to change from one basis to another under such rules and regulations. A utility shall~~ selected. Permission granted by the Secretary to report on a selected basis continues in effect until revoked by the Secretary or the taxpayer receives

permission from the Secretary to change the basis selected. A utility must report its sales on an accrual basis. A sale by a utility of ~~electricity, piped natural gas,~~ electricity or intrastate telephone service is considered to accrue when the utility bills its customer for the sale."

Section 8. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above

described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

~~In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter.~~"

Section 9. G.S. 105-122 is amended by adding a new subsection to read:

"(d1) Credits. -- A corporation is allowed the following credits against the tax imposed by this section for a taxable year:

(1) The credit claimed for the taxable year under Division V of Article 4 of this Chapter.

(2) One-half of the amount of tax payable during the taxable year under Article 5E of this Chapter."

Section 10. G.S. 105-259(b)(5b) reads as rewritten:

"(5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts ~~that were derived from sales within the city and used to determine the city's distribution~~ and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 ~~or~~ and G.S. 105-187.44 or under former ~~distribution under~~ G.S. 105-116 and G.S. 105-120."

Section 11. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(21) To exchange information concerning the tax on piped natural gas imposed by Article 5E of this Chapter with the North Carolina Utilities Commission or the Public Staff of that Commission."

Section 12. G.S. 160A-211 is amended by adding a new subsection to read:

"(c) Piped Gas Restriction. -- A city may not levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes."

Section 13. Notwithstanding G.S. 105-164.4 and G.S. 105-164.6, sales and use tax levied under Article 5 of Chapter 105 of the General Statutes does not apply to piped natural gas sold by a city in this State that operated a piped natural gas

distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

Section 14. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 15. Sections 1 through 12 of this act become effective January 1, 1999, and apply to piped natural gas delivered on or after that date. Section 13 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF SENATE BILL 1327:
Proposed House Committee Substitute
No Tax on Gas Cities

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 22, 1998
SPONSOR: Senator Walter Dalton

Senate Bill 1327 combines the current taxes on piped natural gas into a single, per therm tax and applies the tax uniformly to all sales of piped natural gas not exempt from the tax, effective January 1, 1999. The bill preserves the tax-exempt status for piped natural gas sold by one of the eight municipalities that operate their own piped gas system by exempting them from the tax. The **proposed committee substitute**, proposed by the sponsor of the bill, simply changes the lowest rate from .004 to .0015.

There are three types of sellers of piped natural gas: a utility company, a gas marketer, and a gas city. A utility company is a utility regulated by the Utilities Commission. A gas marketer is a person who sells piped natural gas but is not a regulated utility. Gas marketers use the pipeline infrastructure of the utilities to deliver the gas they sell and they pay a transportation charge to the utilities for this service. Piped natural gas is increasingly sold by persons who are not utilities. A gas city is a city that operates its own piped gas system. Eight cities in the State do this and have since at least the 1950's. The eight gas cities are: Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

Two taxes now apply to piped natural gas. The applicability and rate of the taxes varies depending upon both the identity of the seller and the identity of the consumer. One of these taxes is a gross receipts tax equal to 3.22% of the gross receipts derived by a utility from the business of furnishing piped natural gas. The franchise tax applies only to the receipts of a regulated utility. The franchise tax on piped natural gas was enacted around 1925, when only regulated utilities could sell piped natural gas. Federal and state regulation of the piped natural gas industry has changed and now these regulations allow persons who are not utilities to sell piped natural gas. Therefore, gas marketers and gas cities, because they are not regulated utilities, are not subject to the franchise tax, except to the extent it is imposed on the transportation charges or embedded in the price paid on gas bought from a utility for resale to customers.

The second of these two taxes is the sales tax on piped gas. This tax is the result of a change made by the General Assembly in 1985. That year, the existing 6% utility franchise tax was split into a 3% sales tax and a 3.22% gross receipts tax to

make the sales tax portion deductible by individuals on their federal income tax returns. Although the federal tax law changes in 1986 removed this deduction, North Carolina did not change its taxation of utilities.

For several years, the Department did not impose the general 4% State and 2% local sales and use tax rate to the sale of piped natural gas. However, under a directive recently issued by the Department of Revenue, the Department clarified that piped natural gas is tangible personal property as that term is defined in the sales and use tax statutes. Therefore, effective July 1, 1998, the retail sale of piped natural gas is subject to sales and use tax unless specifically exempted by statute.

The only sales tax exemption applicable to piped natural gas is the "products of the mine" exemption. Under that exemption, the sale of piped gas by the producer of the gas, in the producer's capacity as a producer, is exempt from sales and use tax. Few consumers of piped natural gas buy their gas directly from the producer.

The sale of piped gas by a gas city or by a gas marketer is not exempt from sales and use tax. Therefore, the retail sale of piped gas by these sellers is subject to a 6% State and local sales and use tax unless a lower rate applies. The law provides a lower rate of 3% for all sales made by regulated utilities and a lower rate of 2.83% for sales made to farmers, manufacturers, and laundries. Piped natural gas taxes at the State rate of 3% or 2.83% are not subject to the 2% local sales and use tax. If piped natural gas is purchased from a seller who is not required to collect North Carolina sales tax, then the purchaser is subject to a use tax on the purchase.

Prior to the Department's sales tax directive, the sales and use tax was not imposed on the sale of piped natural gas sold by gas cities and gas marketers. The changes made by the directive become effective July 1, 1998. This bill preserves the tax-exempt status for piped natural gas sold by gas cities.

To correct the other inequities embedded in the bifurcated taxation of piped natural gas, the bill eliminates the distinction between sales by utilities and sales by others and applies a uniform tax to all piped natural gas consumed in this State. The uniform tax is an excise tax on the gas. The tax rate is structured as a "declining block" that decreases as the amount of therms of piped gas consumed in a month increases. A declining block tax rate is used to preserve the current distribution of the tax burden between the three classes of piped gas customers. These three classes are residential, business, and industrial. The current taxes are a percentage of price. The rates for the three classes are also based on price; residential rates are the highest, business rates are in the middle, and industrial rates are the lowest. The current combination of rate and tax therefore results in a higher effective rate of tax on residential customers and a lower rate on business and industrial customers.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1327 (Proprosed Committee Substitute)

SHORT TITLE: No Tax on Gas Cities

SPONSOR(S): Senators Dalton and Phillips

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

(Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
TOTAL Pre - Directive					
General Fund	(.4)	(.7)	(.7)	(.7)	(.7)
Cities	(.3)	(.5)	(.5)	(.5)	(.5)
Post - Directive Additions					
General Fund	(4.7)	(6.8)	(6.9)	(7.0)	(7.2)
Cities and Counties	(0.3)	(0.6)	(0.6)	(0.7)	(0.7)
TOTAL Post - Directive					
General Fund	(5.1)	(7.5)	(7.6)	(7.7)	(7.9)
Local Governments	(.6)	(1.1)	(1.1)	(1.2)	(1.2)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Counties, and Municipalities.

EFFECTIVE DATE: July 1, 1998 for gas cities provisions. All other sections become effective January 1, 1998.

BILL SUMMARY: This bill restructures state excise taxes on natural gas. The bill eliminates the distinction between sales by utilities and sales by others, and applies a uniform excise tax to all piped natural gas consumed in North Carolina. The rate is structured as a "declining block" that decreases as the amount of gas consumed per month increases. The new tax rate is based on the amount of gas consumed, rather than the price paid for the gas. The bill also exempts those cities with their own piped gas systems from the new tax.

BACKGROUND: In the natural gas industry there are three types of sellers: utility companies, gas marketers, and cities that sell their own gas. Several types of tax now apply to piped natural gas, with the rates and type of tax charged determined by the type of seller and buyer. Utility companies are responsible for a sales tax of 3% (2.83% if the customer is a manufacturer) and a gross receipts tax of 3.22% on the commodity price. Under current law the utilities are the only group responsible for sales tax. Gas marketers are responsible for a gross receipts tax on the transportation charge (not the commodity price). However, if the gas is sold to a customer with direct access, no gross receipts tax is payable. Gas cities pay no sales tax, but pay a gross receipts tax only on the gas they purchase for resale from a North Carolina utility. A use tax should be paid by the customers of natural gas marketers. All taxes are based on the price paid for the gas.

On May 5, 1998, the Department of Revenue issued a directive (SD-98-2) concerning the sale of piped natural gas. As of July 1, 1998, piped natural gas will be defined as tangible personal property and its retail sale will be subject to the 6% sales and use tax (4% state and 2% local), unless specifically exempt by statute. Sales of piped natural gas by the producer will continue to be exempt from sales tax. The sale of piped gas by a city is not exempt, and is subject to either a 3% (if utility) or 6% (not a utility) sales tax. A gas marketer is not exempt and would be responsible for the 6% rate. All gas sold to farmers, manufacturers, or laundries will be subject to a 2.83% tax. Utilities will only be responsible for a 3% sales tax rate, or 2.83% if the gas is sold to farmers, manufacturers, or laundries.

ASSUMPTIONS AND METHODOLOGY:

PRE - DOR DIRECTIVE

The first estimate made for SB 1327 is the revenue impact the change in tax rate and tax structure would have on the General Fund and on local governments without the Department of Revenue directive. Actual sales and gross receipts tax collections (related to piped natural gas) in 1997 were estimated to be $58.4 million by the Public Staff of the Utilities Commission. In the same year an additional $1.8 million in use taxes were paid to the Department of Revenue. As such, the total tax collections from natural gas were estimated to be $60.2 million. To determine the anticipated revenue for fiscal year 1998-99, this number was increased by 2% each year to reflect future growth. An adjustment was also made to convert the calendar year numbers to a fiscal year basis. After these calculations, the estimate for FY 1998-99 under the current law is $61,991,337.

SB 1327 proposes to tax natural gas on a declining block tax rate system where the tax decreases as the amount of therms of gas consumed increases. The bill has five tax blocks as shown in the chart on the next page. The tax revenue from the proposed tax rates is $60,801,803 or $1,189,534 less than the projected amount under the current law.

Rate Block (therms)	98-99 Estimated Deliveries (therms)	Rate per therm	98-99 Estimated Tax Receipts
Under 200	535,766,523	$0.0470	$25,181,027
201 to 15,000	354,303,606	$0.0350	12,400,626
15,001 to 60,000	272,888,227	$0.0240	6,549,317
60,001 to 500,000	730,938,356	$0.0200	14,618,767
500,001 and over	149,934,084	$0.0015	224,901
SB 1327 Rate Blocks	2,043,830,796		$58,974,638
Use Tax Revenue			$1,827,165
TOTAL SB 1327			**$60,801,803**
FY 1998-99 Revenue Est.(Current Law)			**$61,991,337**
Revenue Loss			**($1,189,534)**

This revenue loss is shared by the General Fund and cities. In 1996 and 1997 gross receipts revenues, on average, accounted for 52.8% of the total estimated natural gas revenue. The remaining 47.2% comes from sales tax. All of the sales tax revenue remains with the state. The Department of Revenue estimates that approximately 80.4% of the gross receipts tax revenue is distributed to the cities. As a result, the loss in revenue will be distributed 42.45% to the cities (52.8% * 80.4%) and 57.55% to the state. The General Fund revenue loss will be subtracted from projected General Fund tax revenues for FY 1998-99. The revenue loss in the chart above is estimated to grow by 2% a year for fiscal years 1999-00 to 2002-03. The 1998-9 estimate on page one is ½ this amount, as the bill takes effective in January 1999.

POST - DOR DIRECTIVE

Without SB 1327, the state, counties and cities will gain revenue from the taxes imposed on gas cities and natural gas marketers due to the DOR directive. In 1997 it is estimated that marketers sold 64,275,492 decatherms of natural gas valued at $160,688,730. Although not taxed at the marketer level, the Department of Revenue attempts to collect the use tax on the gas from the customers. This note assumes the Department collects use tax (2.83% and 6%) on 25% of the volume sold by marketers. The remaining 75% will be taxed according to the directive. The fiscal note assumes 75% of the volume untaxed prior to July 1, 1998 is going to manufacturers and will be taxed at 2.83%. The fiscal note assumes the other 25% of untaxed gas will be taxed at 6% with the revenue split 4% state and 2% local. Future year growth in gas volume is estimated at 2% a year.

	Gas sold by Marketers	Gas Value	use tax paid on 25% of volume	25% of remainder taxed 6%	75% of remainder taxed 2.83%
1997	64,275,492	$160,688,730	$ 1,773,602	$ 1,807,748	$ 2,557,964
1998	65,561,002	$163,902,505	$ 1,809,074	$ 1,843,903	$ 2,609,123
1999	66,872,222	$167,180,555	$ 1,845,255	$ 1,880,781	$ 2,661,305
2000	68,209,666	$170,524,166	$ 1,882,160	$ 1,918,397	$ 2,714,532
2001	69,573,860	$173,934,649	$ 1,919,804	$ 1,956,765	$ 2,768,822
2002	70,965,337	$177,413,342	$ 1,958,200	$ 1,995,900	$ 2,824,199
2003	72,384,644	$180,961,609	$ 1,997,364	$ 2,035,818	$ 2,880,683
2004	73,832,336	$184,580,841	$ 2,037,311	$ 2,076,534	$ 2,938,296

The other new revenue is from a sales tax on the eight municipal gas systems in the state. In 1997, these cities sold natural gas worth $90 million. Since 7 of the 8 municipal gas systems are utilities, this fiscal note assumes the city gas sales will be taxed at the utilities rate of 3%. A 2% growth rate is used for future year revenues.

	Value of Gas sold by cities	3% tax
1997	$ 90,000,000	$2,700,000
1998	$ 91,800,000	$2,754,000
1999	$ 93,636,000	$2,809,080
2000	$ 95,508,720	$2,865,262
2001	$ 97,418,894	$2,922,567
2002	$ 99,367,272	$2,981,018
2003	$101,354,618	$3,040,639
2004	$103,381,710	$3,101,451

Fiscal year cost is derived from the calendar year estimates by taking half of one year plus half of the next year. For example, the FY 1998-99 estimate equals half of 1998 and half of 1999. The state revenue includes 2/3 of the 6% sales on marketers, all of the 2.83% on marketers, and the tax on gas cities. The local revenue equals 1/3 of the 6% tax on marketers.

	State	Local
FY 97-98	$6,527,760	$608,609
FY 98-99	$6,658,316	$620,781
FY 99-00	$6,791,482	$633,196
FY 00-01	$6,927,312	$645,860
FY 01-02	$7,065,858	$658,777
FY 02-03	$7,207,175	$671,953

Although this fiscal note shows a loss of post - directive revenue due to this bill, this income was not built into the consensus General Fund revenue estimate for FY 1998-99. The 1998-9 estimates on page one reflect ½ of the revenue loss associated with the everything except the gas cities, as these provisions do not come into affect until January 1999. Because the gas cities

exemption becomes effective at the beginning of the fiscal year, the entire cost is included in the estimate.

TECHNICAL CONSIDERATIONS: It should be noted that natural gas prices are highly volatile and very sensitive to changes in climate and market forces. As such, year to year variations in the revenue associated with natural gas taxes, under the current system, can vary dramatically. It should also be noted that an increase in transportation gas directly increases the amount of revenue distributed to cities. This note differs from the previous note because of 1) the change in the rate for the largest rate block (500,001 and over) 2) new data from the Department of Revenue concerning the distribution of natural gas revenues, and 3) inclusion of the use taxes paid in the base revenue estimate, under the current system.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps & Richard Bostic
APPROVED BY: Tom Covington

DATE: June 11, 1998

McComas #1
Withdrawn

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1327-ARB-29 Page 1 of __

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [YES]
S1327-PCS3627-RB

Representative McComas

moves to amend the bill on page 1, lines 2 through 4, by rewriting the lines to read:
"AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES, TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM, AND TO DIRECT THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE TO STUDY THE ISSUE OF PIPED NATURAL GAS DEREGULATION.";

Title incorrect

and on page 14, line 44 through page 15, line 2, by rewriting these lines to read:
"to piped natural gas sold by a person that is not subject to franchise tax under G.S. 105-116.";

Perfecting Amendment to correct the Title

and on page 15, lines 2 and 3, by inserting a new section between those lines to read:
"Section 14. The Utilities Commission shall study the transportation rates charged by the local distribution companies to transport piped natural gas from the interstate pipeline to the consumer.";

and on page 15, line 3, by deleting "Section 14." and substituting "Section 15.";

and on page 15, line 7, by deleting "Section 15." and substituting "Section 16.";

and on page 15, lines 7 and 8, by deleting "January 1, 1999," and substituting "July 1, 1999,".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1327-ARB-29 Page 2 of __

SIGNED _____

Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

To the McComas Amendment withdrawn

FISCAL ANALYSIS MEMORANDUM

DATE: June 23, 1998

TO: House Finance

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: SB 1327 - Amendment to change effective date to July 1999; Maintain current sales tax on utilities and gross receipts tax system until that time.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUE					
TOTAL Pre - Directive					
General Fund	(1.4)	(2.1)	(2.1)	(2.2)	(2.2)
Cities	(.4)	(.9)	(.9)	(.9)	(.9)
Post - Directive Additions					
General Fund	(6.7)	(6.8)	(6.9)	(7.0)	(7.2)
Cities and Counties	(0.6)	(0.6)	(0.6)	(0.7)	(0.7)
TOTAL Post - Directive					
General Fund	(8.1)	(8.9)	(9.0)	(9.2)	(9.4)
Local Governments	(1.0)	(1.5)	(1.5)	(1.6)	(1.6)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Counties, and Municipalities.

EFFECTIVE DATE: Language to stop the impact of the Department of Revenue directive becomes effective immediately. The rate structure in the bill will become effective July 1, 1999.

AMENDMENT SUMMARY: This amendment does several things. First, it delays the effective date of the bill until July 1, 1999. Second, it directs the Department of Revenue to continue taxing natural gas as they currently do, with the exception of the use tax, until that time. Third, it requires future study of the transportation rate issue by the Utility Commission.

ASSUMPTIONS AND METHODOLOGY: This note assumes that the Department of Revenue will continue to collect and distribute the amounts of natural gas related sales tax (utilities) and gross receipts tax revenue as they would have under the current law, until July 1, 1999. After July 1, 1999 the Department and associated organizations will collect revenue based on the rate blocks and exemptions included in S.B. 1327 PCS.

The note assumes the Department of Revenue will no longer be able to collect the use tax from the customers of gas marketers. In 1997 it is estimated that marketers sold 64,275,492 decatherms of natural gas valued at $160,688,730. Although not taxed at the marketer level, the Department of Revenue attempts to collect the use tax on the gas from the customers. This note assumes the Department collects use tax (2.83% and 6%) on 25% of the volume sold by marketers. Future year growth in gas volume is estimated at 2% a year.

Year	Gas Sold by Marketers	Gas Value	Use Tax Paid on 25% of Volume
1997	64,275,492	$160,688,730	$1,773,602
1998	65,561,002	$163,902,505	$1,809,074
1999	66,872,222	$167,180,555	$1,845,255
2000	68,209,666	$170,524,166	$1,882,160
2001	69,573,860	$173,934,649	$1,919,804
2002	70,965,337	$177,413,342	$1,958,200
2003	72,384,644	$180,961,609	$1,997,364
2004	73,832,336	$184580,841	$2,037,311

The estimates above were adjusted to a fiscal year basis by including 1/2 of the estimated use tax paid from each calendar year of the fiscal year.

This note assumes that 50% of the use tax currently collected is paid by customers subject to the 6% tax, and 50% is paid by customers subject to a 2.83%. All of the revenues from the 2.83% customers are retained by the state. Because the 6% tax is shared with the counties (4% state, 2% county), approximately 2/3 of the revenue in this category goes to the state, and the remainder is forwarded to the counties. It is assumed that the loss of use tax revenue will take place by the beginning of FY 1998-9.

	State Use Taxes	County Use Taxes	TOTAL
FY 1997-8	$ 1,385,599	$ 405,739	$ 1,791,338
FY 1998-9	$ 1,413,311	$ 413,854	$ 1,827,165
FY 1999-0	$ 1,441,577	$ 422,131	$ 1,863,708
FY 2000-1	$ 1,470,409	$ 430,574	$ 1,900,982
FY 2001-2	$ 1,499,817	$ 439,185	$ 1,939,002
FY 2002-3	$ 1,529,813	$ 447,969	$ 1,977,782

TECHNICAL CONSIDERATIONS: It should be noted that natural gas prices are highly volatile and very sensitive to changes in climate and market forces. As such, year to year variations in the revenue associated with natural gas taxes, under the current system, can vary dramatically. It should also be noted that an increase in transportation gas directly increases the amount of revenue distributed to cities.

Berry Amendment #2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by Principal Clerk)

S1327-ARB-28

Page 1 of __

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [YES]
S1327-PCS3627-RB

Representative Berry

moves to amend the bill on page 1, lines 2 through 4, by rewriting those lines to read:
"AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY A SUPPLIER WHO IS NOT A REGULATED UTILITY AND TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO STUDY THE TAXATION OF PIPED NATURAL GAS.";

and on page 1, line 6 through page 15, line 10, by rewriting the lines to read:

"Section 1. Notwithstanding G.S. 105-164.4 and G.S. 105-164.6, sales and use tax levied under Article 5 of Chapter 105 of the General Statutes does not apply to piped natural gas sold by a person that is not subject to franchise tax under G.S. 105-116.

Section 2. The Revenue Laws Study Committee shall study the taxation of piped natural gas and shall report its findings and recommendations to the 1999 General Assembly.

Section 3. This act is effective when it becomes law. Section 1 of this act expires December 30, 2000.".

SIGNED _____

Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1327

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1327-ARB-28

ADOPTED _____ FAILED _____ TABLED _____

ANALYSIS OF TAXES ON PIPED NATURAL GAS
June 1998

Type of Transaction	Current Law Pre-Directive	Impact of Revenue Dept. Directive	Senate Bill 1327
1. LDC sales - Gas sale by a LDC to an end-user.	GRT @ 3.22% and sales tax @ 3% (2.83% if the end-user is a manufacturer).	None.	GRT and sales taxes replaced by a tax per therm on gas that is consumed by the end-user.
2. LDC transport - Transport by a LDC of gas purchased from a marketer or producer.	The LDC transportation charge is subject to GRT @ 3.22% and no sales tax. The gas purchased from a producer is not subject to tax. Gas purchased from a marketer is subject to a 6% or 2.83% use tax.	Sales tax rate of 6% (2.83% if the end-user is a manufacturer) for gas purchased from marketer. No sales tax for gas purchased from a producer.	GRT and sales taxes replaced by a tax per therm on gas that is consumed by the end-user.
3. Sales to NCNG gas cities - Gas sale by a LDC to a municipal gas system (MGS).	GRT @ 3.22%, no sales tax.	Gas consumed by the city is subject to a 6% sales or use tax.	No tax.
4. Sales by gas cities – Gas sale by a MGS to an end-user.	No GRT or sales tax.	Sales tax rate of 3% if the MGS is a utility, 6% if the MGS is not a utility. A sales tax rate of 2.83% applies if the end-user is a manufacturer.	No tax.
5. Transco deliveries to gas cities – Deliveries by Transco of gas purchased from a marketer or producer to a gas city.	No GRT or sales tax.	Gas consumed by the city is subject to a 6% sales or use tax.	No tax.
6. Transco/Columbia deliveries to end-users – Deliveries by an interstate pipeline of gas purchased from a marketer or producer to Panda Energy.	No GRT or sales tax.	Sales tax rate of 6% (2.83% if end-user is a manufacturer) for gas purchased from marketer. No sales tax for gas purchased from a producer. No tax on pipeline transport charges.	GRT and sales taxes replaced by a tax per therm on gas that is consumed by the end-user.

The **NCNG gas cities** includes the municipal gas systems for Greenville, Monroe, Rocky Mount and Wilson. The **Transco gas cities** includes the municipal gas systems for Shelby, Lexington, Kings Mountain and Bessemer City. Bessemer City is the only MGS not considered a utility.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1327 A BILL TO BE ENTITLED AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES AND TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1327
Finance Committee Substitute Adopted 6/10/98
Proposed House Committee Substitute S1327-PCSX9753-RB3

Short Title: No Tax on Gas Cities. (Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES, TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM, TO ADJUST THE CITIES' DISTRIBUTION OF THE TAX PROCEEDS UNTIL JUNE 30, 2000, TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO DETERMINE THE IMPACT OF THE TAX ON THE DISTRIBUTION TO CITIES, AND TO DIRECT THE UTILITIES COMMISSION TO STUDY THE ISSUE OF TRANSPORTATION RATES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5E.

"Piped Natural Gas Tax.

"**§ 105-187.40. Definitions.**

The definitions in G.S. 105-228.90 and the following definitions apply in this Article:

(1) Gas city. -- A city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

(2) Local distribution company. -- A natural gas company to whom the North Carolina Utilities Commission has issued a franchise under Chapter 62 of the General Statutes to serve an area of this State.

(3) Premises. -- Defined in G.S. 62-110.2. When applying the definition of premises to this Article, electric service is to be construed as piped natural gas service.

(4) Sales customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by the seller of the gas.

(5) Transportation customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by a person who is not the seller of the gas.

"**§ 105-187.41. Tax imposed on piped natural gas.**

(a) Scope. -- An excise tax is imposed on piped natural gas received for consumption in this State. This tax is imposed in lieu of a sales and use tax and a percentage gross receipts tax on piped natural gas.

(b) Rate. -- The tax rate is set in the table below. The tax rate is based on monthly therm volumes of piped natural gas received by the end-user of the gas. If an end-user receives piped natural gas that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices, unless the devices are located on the same premises and are part of the same billing account. In that circumstance, the tax is calculated on the total volume metered through the two or more separate measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$.047
201 to 15,000	.035
15,001 to 60,000	.024
60,001 to 500,000	.015
Over 500,000	.003

(c) Gas City Exemption. -- The tax imposed by this section does not apply to piped natural gas received by a gas city for consumption by that city or to piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

"**§ 105-187.42. Liability for the tax.**

The excise tax imposed by this section on piped natural gas is payable as follows:

(1) For piped natural gas delivered by a local distribution company to a sales or transportation customer, the tax is payable by the local distribution company.

(2) For piped natural gas delivered by a person who is not a local distribution company to a sales or transportation customer, the tax is payable by that person.

(3) For piped natural gas received by a person by means of direct access to an interstate gas pipeline for consumption by that person, the tax is payable by that person.

"§ 105-187.43. Payment of the tax.

(a) Monthly Return. -- The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) Small Underpayments. -- A person is not subject to interest on or penalties for an underpayment of a monthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.

"§ 105-187.44. Distribution of part of tax proceeds to cities.

(a) City Information. -- A monthly return filed under this Article must indicate the amount of tax attributable to the following: if a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city:

(1) Piped natural gas delivered during the month to sales or transportation customers in each city in the State.

(2) Piped natural gas received during the month in each city in the State by persons who have direct access to an interstate gas pipeline and who receive the gas for their own consumption.

(b) Distribution. -- Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section.

"§ 105-187.45. Information exchange and information returns.

(a) Utilities Information. -- The North Carolina Utilities Commission or the Public Staff of that Commission must give the Secretary a list of the entities that receive piped natural gas from an interstate pipeline and any other information available to the Commission that the Secretary asks for in administering the tax imposed by this Article.

(b) Information Return. -- The Secretary may require the operator of an interstate pipeline to report the amount of piped natural gas taken from the pipeline in this State, the persons that received the gas, and the volume received by each person.

"§ 105-187.46. Records and audits.

(a) Records. -- A person who is required to file a return under this Article must keep a record of all documents used to determine information provided in the return. The records must be kept for three years after the due date of the return to which the records apply.

(b) Audits. -- The Secretary may audit a person who is required to file a return under this Article."

Section 2. G.S. 105-116 reads as rewritten:

"**§ 105-116. Franchise or privilege tax on electric power, ~~natural gas,~~ water, and sewerage companies.**

(a) Tax. -- An annual franchise or privilege tax is imposed on the following:

(1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.

~~(2) A natural gas company engaged in the business of furnishing piped natural gas.~~

~~(2a) A regional natural gas district created under Article 28 of Chapter 160A of the General Statutes.~~

(3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.

(4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. ~~The tax on a natural gas company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing piped natural gas.~~ The tax on a regional natural gas district is three and twenty-two hundredths percent (3.22%) of the district's taxable gross receipts from the furnishing of piped natural gas. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Report and Payment. -- The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. An electric power ~~company, a natural gas company, or a regional natural gas district~~ company shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. A taxpayer is not subject to interest on or penalties for an underpayment of a monthly amount due if the taxpayer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files. A water company or a public sewerage company shall pay tax quarterly when filing a report.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A taxpayer shall submit a report on a form provided by the Secretary. The report shall include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

(1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under ~~G.S. Chapter 159B~~ Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power ~~company, a natural gas company, or a regional natural gas district,~~ company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a).

A taxpayer ~~shall~~ must report its gross receipts on an accrual basis. If a taxpayer's report does not state the taxpayer's taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the taxpayer's taxable gross receipts to the city.

~~(c) Gas Special Charges. -- Gross receipts of a natural gas company do not include the following:~~

~~(1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.~~

~~(2) Natural gas expansion surcharges imposed under G.S. 62-158.~~

(d) Distribution. -- Part of the taxes imposed by this section on electric power companies, natural gas companies, and regional natural gas districts is distributed to cities under G.S. 105-116.1.

(e) Local Tax. -- So long as there is a distribution to cities from the tax imposed by this section, no city shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. ~~If any municipality shall have~~

~~collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment.~~

~~(f) Gas City Exemption. -- The tax imposed by this section does not apply to the following cities that operate their own piped natural gas systems: Bessemer City, Kings Mountain, Lexington, Shelby, Greenville, Monroe, Rocky Mount, and Wilson.~~"

Section 3. G.S. 105-116.1 reads as rewritten:

"**§ 105-116.1. Distribution of gross receipts taxes to cities.**

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

(1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power ~~company, a natural gas company, a regional natural gas district,~~ company and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) Distribution. -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric power ~~companies, natural gas companies, regional natural gas districts,~~ companies and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.

(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsection (c) of this section. This amount is the total hold-harmless adjustment.

(2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.

(3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

(4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 4. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means an electric power ~~company, a gas company, a regional naturalgas district,~~ company or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. ~~105-120(e)~~ 105-120(e), or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

(1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

(1a) The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser. The maximum tax is three hundred dollars ($300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.

(1b) The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article.

(1c) The rate of one percent (1%) applies to the sales price of the following articles:

a. Horses or mules by whomsoever sold.

b. Semen to be used in the artificial insemination of animals.

c. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to farmers to be used by them for any farm purposes other than preparing food, heating ~~dwellings~~ dwellings, and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed ~~herein.~~ by this subdivision.

d. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.

e. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

(1d) The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars ($80.00) per article.

a. Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under this section.

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision,

which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term 'manufacturing industries and plants' does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.

f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.

h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.

(1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity ~~and piped natural gas~~ described in this subdivision and measured by a separate meter or another separate device:

a. Sales of electricity ~~and piped natural gas~~ to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

b. Sales of electricity ~~and piped natural gas~~ to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity ~~and gas~~ to be used for residential heating purposes. The quantity of electricity ~~or gas~~ purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

c. Sales of electricity ~~and piped natural gas~~ to commercial laundries or to pressing and dry-cleaning establishments for

use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

(2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.

(3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term 'persons who rent to transients' means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including 'real estate brokers' as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

(4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.

(4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of ~~electricity, piped natural gas,~~ electricity or local telecommunications service as defined by G.S. 105-120(e), other than sales of electricity ~~or piped natural gas~~ subject to tax under another subdivision in this section. ~~Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158.~~ A person who operates a utility is considered a retailer under this Article.

(4b) A person who sells tangible personal property at a flea market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the flea market. A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term 'flea market' means a place where space is rented to a person for the purpose of selling tangible personal property.

(4c) The rate of six and one-half percent (6 1/2%) applies to the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate from and terminate in the State and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides these services is considered a retailer under this Article. This subdivision does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

(5) **(Effective until July 1, 1998)** The rate of three percent (3%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

(5) **(Effective July 1, 1998)** The rate of two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 6. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Piped natural gas. -- This item is exempt because it is taxed under Article 5E of this Chapter."

Section 7. G.S. 105-164.20 reads as rewritten:

"**§ 105-164.20. Cash or accrual basis of reporting.**

Any retailer, except a utility, ~~taxable under this Article having both cash and credit sales~~ may report ~~such~~ sales on either the cash or accrual basis of accounting upon making application to the Secretary for permission to use ~~such~~ the basis ~~of reporting under such rules and regulations as shall be promulgated from time to time by the Secretary. Such permission shall continue in force and effect unless revoked by the Secretary but he may grant written permission to any such taxpayer upon application therefor to change from one basis to another under such rules and regulations. A utility shall~~ selected. Permission granted by the Secretary to report on a selected basis continues in effect until revoked by the Secretary or the taxpayer receives permission from the Secretary to change the basis selected. A utility must report its sales on an accrual basis. A sale by a utility of ~~electricity, piped natural gas,~~ electricity or intrastate telephone service is considered to accrue when the utility bills its customer for the sale."

Section 8. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water

pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

~~In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter.~~"

Section 9. G.S. 105-122 is amended by adding a new subsection to read:

"(d1) Credits. -- A corporation is allowed the following credits against the tax imposed by this section for a taxable year:

(1) The credit claimed for the taxable year under Division V of Article 4 of this Chapter.

(2) One-half of the amount of tax payable during the taxable year under Article 5E of this Chapter."

Section 10. G.S. 105-259(b)(5b) reads as rewritten:

"(5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts ~~that were derived from sales within the city and used to determine the city's distribution~~ and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 ~~or~~ and G.S. 105-187.44 or under former ~~distribution under~~ G.S. 105-116 and G.S. 105-120."

Section 11. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(21) To exchange information concerning the tax on piped natural gas imposed by Article 5E of this Chapter with the North Carolina Utilities Commission or the Public Staff of that Commission."

Section 12. G.S. 160A-211 is amended by adding a new subsection to read:

"(c) Piped Gas Restriction. -- A city may not levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes."

Section 13. Notwithstanding G.S. 105-164.4 and G.S. 105-164.6, sales and use tax levied under Article 5 of Chapter 105 of the General Statutes does not apply to piped natural gas sold by a person that is not subject to franchise tax under G.S. 105-116.

Section 14. (a) Notwithstanding G.S. 105-187.44(b), as enacted by this act, the amount distributed to a city under G.S. 105-187.44(b) for taxes collected for each of the quarters in the fiscal year 1999-2000 may not exceed its benchmark amount until each city receives an amount equal to its benchmark amount. Each quarter, the Secretary of Revenue shall determine a city's benchmark amount and the amount it would receive under G.S. 105-187.44(b) if not for the redistribution required by this section. The Secretary shall identify those cities whose distribution amounts under G.S. 105-187.44(b) are less than their benchmark amounts and shall determine the total dollar amount of the shortfall. The Secretary shall reduce the amount to be distributed to those cities whose distribution amount under G.S. 105-187.44(b) exceeds their benchmark amount by the total dollar amount of the shortfall determined for that quarter in proportion to each city's excess. However, in no event may a city's distribution amount be reduced below its benchmark amount. The Secretary will redistribute these monies to the cities whose distribution amounts under G.S. 105-187.44(b) are less than their benchmark amounts in proportion to each city's shortfall. In any quarter that a city does not have a prior year's distribution for the corresponding quarter in fiscal year 1998-99, that city is excluded from the redistribution required under this section for that quarter. In that case, the city will receive the amount it is entitled to receive under G.S. 105-187.44(b), as enacted by this act.

For the purposes of this subsection, the term "benchmark amount" means the amount a city received under G.S. 105-116.1 attributable to piped natural gas for the corresponding quarter during the fiscal year 1998-99.

(b) The Department of Revenue must calculate the amount a city received for taxes collected for each of the first three quarters in fiscal year 1998-99 under G.S. 105-116.1 that was attributable to piped natural gas. The Department must also calculate the amount each city would have received under G.S. 105-187.44(b), as enacted by this act, for taxes collected for each of the first three quarters in fiscal year 1999-2000. The Department shall give this information to the Revenue Laws Study Committee. The Revenue Laws Study Committee shall study the impact of this act on the distribution of part of the proceeds of the excise tax on piped

natural gas to the cities and report its findings, and any recommendation, to the 2000 Session of the 1999 General Assembly.

Section 15. The Utilities Commission shall study the transportation rates charged by the local distribution companies to transport piped natural gas from the interstate pipeline to the consumer.

Section 16. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 17. Sections 1 through 12 of this act become effective July 1, 1999, and apply to piped natural gas delivered on or after that date. Section 13 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Horse Finance — June 23, 1998 (AM)

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ed Leggett	Jasper Textiles Box 2519 Lumberton, N.C. 28358
Paul Stock	NC Bankers Assn.
Stuart Dixon	NC Natural Gas
Bill McAlay	P.S.N.C.
Joan Myers	NCEPTA
Bill Scoggin	NC Bar Assoc.
Deborah Lamm	Dept of Commerce / Energy Div
Joe Pennacchia	Piedmont Natural Gas Co.
Paul Logan	OSBM
John Colombo	DOT
Sarah Smith	WCSR
Chris Smith	City of Lexington

VISITOR REGISTRATION SHEET

House Finance — June 23, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Dennis Roberts	City of Lexington
Carrie Attman	Intern - Science & Tech.
Dee Freeman	City Of Shelby
Ed Wyatt	City of Wilson
DB	NCFB
Mike Ham	NC State AFLCIO
Amy Fullbright	Hunton & Williams
Sam Kirby	NCUC
Alice Garland	Electricities
AW Turner	Public Staff - NCUC
Doug Miskew	IBM
Jim Hoard	Public Staff - NCUC

VISITOR REGISTRATION SHEET

House Finance — June 23, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Sheila Dorsey	City of Rocky Mount
Bill Sherk	" " " "
Mark McDonald	" " " "
Gordon Baker	City of Wilson
Chuck Whitley	City of Wilson
Sam Johnson	Atty
Charles Francis	Wood & Francis, PLLC
John Jordan	Jordan, Price, Wall, Gray & Jones
Martha Glass	DOA
Heather Finl	GSA
Danny McGuire	Commerce / ITS
Bernard Allen	SOS

VISITOR REGISTRATION SHEET

Name of Committee: House Finance

Date: June 23, 1998

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	[illegible]
[illegible]	[illegible]
Matt Osborne	AOC
Stacey Slaughter	Legislative Intern
R. Paul Wilms	NCMBA
Jon Worth	CHS
Patti Stanbell	DOR
Betty Daniel	DOR
Lennie Collins	DOR
Lyn Martin	RJR Packaging Winston-Salem
Karen Miller	C.U.C.A.
Tony Monfrado	Eaton Corp., Roxboro, N.C.

VISITOR REGISTRATION SHEET

House Finance — June 23, 1998

ame of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bruce Garner	Sec of State
Meredith Norris	Laurence Bewley & Assoc.
Mark Beason	Capital Group
Danny Rogers	NCDOT
Lee Duncan	WCSR
Sabra Faires	Dept of Revenue
Nancy Poncranz	DOR
Glenn Jernigan	N.C. Natural Gas
Steve Keane	NC Med Soc.
Lee Kindberg	Hoechst Celanese
Jon Perry	Capital Group
AB. Swindell	BFT

VISITOR REGISTRATION SHEET

House Finance — June 23, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Wilbur Gilley	DOT
Andy Sabol	DOR
[signature]	"
Natalie Haskins	Charlotte Chamber

VISITOR REGISTRATION SHEET

House Utilities — June 23, 1998 (PM)

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Name Illegible	Poyner & Spruill
Bill McAulay	PSNC
Ed Leggett	Jasper Textiles
Stuart Dixon	NCNG
Allyson Duncan	Kilpatrick Stockton
Dee Freeman	City Of Shelby
Alice Garland	Electricities
LEIGHTON POPER	—
Doug Miskew	IBM
Brenda Dougherty	Sprint
RW Kaylor	Kaylor Law Firm
MEREDITH NORRIS	Lawrence Bewley

VISITOR REGISTRATION SHEET

Horse Power — June 23, 1998 (pm)

ame of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Sandy Sands	WCSR
B.E. Scarbo	NC State Council
Sam Kirby	NCUC
Bob Bennett	III
Tom Kilbin	Moo - Van allen
Natalie Hoskins	Charlotte Chamber
Jon Updhurch	CPCC
Andy Romeo	NCLM
Ken Duncan	WCSR
John McAlister	Duke Energy
AW Turner	Public Staff - NCUC
Jim Hoard	Public Staff - NCUC

VISITOR REGISTRATION SHEET

House Finance — June 23, 1998 (pm)

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Chuck Whitley	City of Wilson
Charles Francis	Woods & Francis, PLLC
Kelli Kukura	DuPont
Len Kindberg	Hoechst Celanese
Jerry Roberts	C.U.C.A.
Sharon Miller	C.U.C.A.
Douglas A. McCaig	AlliedSignal
Lyn Martin	R J R Packaging
Chris Hayes	Electric Co-ops
Roger Bone	Bone & Assoc.
Judy Gatlin	Speaker's Office
Andy Sabol	Dept. of Revenue

VISITOR REGISTRATION SHEET

Name of Committee: House Finance

Date: June 23, 1998 (pm)

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Betty Odell	DOR
Lonnie Cowin	Revenue
Mark Beason	Capital Group
Patti Stowell	DOR
Sabra Faires	Dept of Revenue
Charles Cullen	" "
PERRI MORGAN	NFIB
Adam Jennings	N.C. Natural Gas Corp.

MINUTES

HOUSE COMMITTEE ON FINANCE

THURSDAY, JUNE 18, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Thursday, June 18, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Rep. Dickson called the meeting to order and introduced the Pages.

HB-1238 EXEMPT TOBACCO ASSISTANCE PAYMENTS

Rep. Baker gave an overview from the Wednesday meeting. Rep. Brown moved for adoption of the new Proposed Committee Substitute for discussion. So moved. Rep. Cunningham asked about credits being allowed for tobacco growers. Rep. Baker responded. Rep. Mercer spoke in favor of the bill. Rep. Carpenter agreed with Rep. Mercer's comments in favor of the bill. Rep. Brown moved for a favorable report, as to unfavorable to the original bill. Rep. Hackney asked for a comparison of this and the dairy farm buy-out. Ms. Cindy Avrette, Research Division, responded. Rep. Hackney made additional comments. Rep. Buchanan spoke in favor of the bill. Rep. Hill urged support. Rep. Luebke spoke on caps on allotments. Rep. Baker would oppose a cap. Rep. Luebke spoke again and Rep. Baker addressed his comments. Rep. Cole and Rep. Russell spoke in favor of the bill.

Rep. Cunningham sent forth an amendment, explained and requested a roll call vote. Rep. Baker urged defeat of the amendment. Rep. Brown and Rep. Mercer also opposed the amendment. Rep. Luebke asked staff to give a more detailed explanation of the amendment and Ms. Avrette explained. Rep. Hackney also asked for additional clarification. The vote was taken on the amendment and failed, 9-22.

Rep. Hensley shared concerns about the bill. Rep. Brown called the question. Rep. Luebke asked for a point of order and requested a fiscal note. Rep. Baker responded. The Chairman temporarily displaced the bill until a decision could be made regarding the fiscal note.

HB-1356 ELECTRONIC COMMERCE ACT

Rep. Berry moved for adoption of the new Proposed Committee Substitute for discussion. So moved. Rep. Reynolds gave another explanation of this bill. (It had been before the committee on a previous day). Mr. Walker Reagan, Research Division also gave a more detailed explanation. Rep. Capps questioned staff about fees and Mr. Reagan responded. Mr. Scott Templeton, Deputy Secretary of State addressed members regarding fees. Rep. Eddins moved for a favorable report, unfavorable to the original bill. Rep. Womble had a series of questions and Mr. Reagan responded to each of them. Rep. Reynolds and Mr. Templeton also addressed Rep. Womble's comments/questions. Rep. Ramsey asked if local officials were exempt. Mr. Reagan responded to his inquiry.

Rep. Hackney sent forth an amendment and explained. The vote was taken and passed.

Rep. Hackney sent forth another amendment and explained Part 1 of this amendment. The vote was taken and adopted for Part 1. He then explained Part 2 of the amendment. Discussion continued and Rep. Hackney withdrew his Part 2 of the amendment. Rep. Reynolds addressed the bill again. Rep. Nesbitt spoke on penalties and Mr. Templeton addressed his comments. Rep. Eddins suggested another dollar amount for a penalty.

Time expired and the meeting adjourned at 9:50.

Rep. Dickson, Chairman

Cindy Brooks, Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

THURSDAY, JUNE 18, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

BILLS FOR DISCUSSION:

HB-1248 Exempt Tobacco Assistance Payments	Rep. Baker
HB-1356 Electronic Commerce Act	Rep. Reynolds
SB-1229 Abolish Inheritance Tax Waivers	Sen. Kerr

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1248*
Committee Substitute Favorable 6/4/98
Proposed Committee Substitute H1248-PCS9010-LB

Short Title: Exempt Tobacco Assistance Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM INCOME TAX FEDERAL PAYMENTS TO TOBACCO ALLOTMENT HOLDERS, TOBACCO WORKERS, AND TOBACCO FARMERS AS COMPENSATION FOR LOSSES DUE TO FEDERAL LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(17) The amount paid to the taxpayer by the federal government during the taxable year as reimbursement for loss of tobacco quotas."

Section 2. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(15) The amount paid to the taxpayer by the federal government during the taxable year for any of the following:

a. Reimbursement for loss of tobacco quotas.

b. Transition assistance for tobacco workers.

c. Higher education assistance grants for members of tobacco farm families granted because of legislation specific to the tobacco industry."

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1248*
Committee Substitute Favorable 6/4/98

Short Title: Exempt Tobacco Assistance Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM INCOME TAX FEDERAL PAYMENTS TO TOBACCO ALLOTMENT HOLDERS, TOBACCO WORKERS, AND TOBACCO FARMERS AS COMPENSATION FOR LOSSES DUE TO THE FEDERAL TOBACCO SETTLEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(17) The amount paid to the taxpayer by the federal government during the taxable year under the federal Long-Term Economic Assistance for Farmers (LEAF) Act as reimbursement for loss of tobacco quotas."

Section 2. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(15) The amount paid to the taxpayer by the federal government during the taxable year under the federal Long-Term Economic Assistance for Farmers (LEAF) Act as any of the following:

a. Reimbursement for loss of tobacco quotas.

b. Transition assistance for tobacco workers.

c. Higher education assistance grants for members of tobacco farm families."

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 1248 - PCS DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

Rep.) Cunningham
Sen.)

moves to amend the bill on page 1, line 3

by deleting "TOBACCO WAREHOUSE OWNERS,"

and on page 1, lines 11-19, by rewriting those lines to read:

"reimbursement for loss of tobacco quotas." ;

and on page 2, lines 9-15, by deleting those lines.

SIGNED _____

ADOPTED _____ FAILED X TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Cunningham Amendment

ROLL CALL VOTE

9 YES 22 NO = _____(TOTAL)

HB# 1248
SB# ____

HOUSE STANDING COMMITTEE ON _____

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
___	___	ALLRED	___	___	HIGHTOWER
___	✓	ARNOLD	___	___	JARRELL
___	___	BADDOUR	✓	___	LUEBKE
___	✓	BEALL	___	___	MCCOMAS
___	✓	BERRY	___	✓	MCCOMBS
✓	___	BOYD-MCINTYRE	___	✓	MCMAHAN
___	✓	BROWN	___	✓	MERCER
___	✓	BUCHANAN	___	___	MILLER
___	✓	CAPPS	___	___	MINER
___	✓	CARPENTER	___	___	MORGAN
✓	___	COLE	___	✓	MORRIS
___	___	CRAWFORD	___	___	NEELY
✓	___	CUNNINGHAM	___	___	NESBITT
___	✓	DECKER	___	___	NICHOLS
✓	___	DEDMON	___	✓	RAMSEY
___	✓	EDDINS	___	✓	RAYFIELD
___	___	FITCH	___	✓	RUSSELL
___	___	GAMBLE	___	✓	STARNES
✓	___	GOODWIN	___	___	TALLENT
✓	___	HACKNEY	✓	___	WOMBLE
✓	___	HENSLEY	___	___	WRIGHT
___	✓	HILL	___	___	
___	✓	HOWARD	___	___	
___	___	HUNTER	___	___	

___	___	**CHAIRMEN**		
___	✓	GRAY	___	___
___	✓	BRAWLEY	___	___
___	___	DICKSON with	___	___
___	✓	WILSON, C.	___	___
___	___		___	___
___	___		Ex officio Members	
___	___		___	___ Speaker Pro TemWOOD
___	___		___	___ Majority LeaderDAUGHTRY
___	___		___	___ Majority Whip

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1356-CSRU-002
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1356
THIS IS A DRAFT 18-JUN-98 00:06:00
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Electronic Commerce Act. (Public)

Sponsors:

Referred to:

May 20, 1998

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC AGENCIES 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.

The General Assembly of North Carolina enacts:

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

"ARTICLE 11A.

"Electronic Commerce in Government.

"§ 66-58.1. Title; purpose.

This Article shall be known and may be cited as the Electronic Commerce Act. The purpose of this Article is to facilitate electronic commerce with public agencies and regulate the application of electronic signatures when used in commerce with public agencies.

"§ 66-58.2. Definitions.

The following definitions apply in this Article:

(1) 'Certification authority' means a person authorized by the Secretary to facilitate electronic commerce

by vouching for the relationship between a person or public agency and that person's or public agency's electronic signature.

(2) 'Electronic signature' means any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature.

(3) 'Person' means any individual, firm, partnership, corporation, or combination thereof of whatsoever form or character.

(4) 'Public agencies' means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(5) 'Secretary' means Secretary of State.

(6) 'Transaction' means an electronic transmission of data between a person and a public agency, or between public agencies, including, but not limited to, contracts, filings, and legally operative documents.

"§ 66-58.3. Use of electronic signatures.

(a) All public agencies may accept electronic signatures.

(b) Signatures that require attestation by a notary public may not be in the form of an electronic signature.

"§ 66-58.4. Validity of electronic signatures.

(a) An electronic signature contained in a transaction between a person and a public agency, or between public agencies, shall have the same force and effect as a manual signature provided all of the following requirements are met:

(1) The public agency involved in the transaction requests or requires the use of electronic signatures.

(2) The electronic signature contained in the transaction embodies all of the following attributes:

(a) It is unique to the person using it;

(b) It is capable of certification;

(c) It is under sole control of the person using it;

(d) It is linked to data in such a manner that if the data are changed, the electronic signature is invalidated; and

(e) It conforms to rules adopted by the Secretary pursuant to this Article.

(b) A transaction between a person and a public agency, or between public agencies, is not unenforceable, nor is it inadmissible into evidence, on the sole ground that the transaction is evidenced by an electronic record or that it has been signed with an electronic signature.

"**§ 66-58.5. Enforcement.**

(a) The Secretary may investigate complaints or other information indicating fraudulent or unlawful conduct that violates this Article or the rules promulgated thereunder.

(b) The Superior Court Division of the General Court of Justice has jurisdiction and authority upon application of the Secretary to enjoin or restrain violations of this Article.

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

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

"**§ 66-58.6. Civil penalty.**

The Secretary may assess a civil penalty of not more than one hundred thousand dollars ($100,000) against any certification authority that violates a provision of this Article or any rule promulgated thereunder. In determining the amount of a penalty under this subsection, the Secretary shall give due consideration to each of the following factors:

(1) The organizational size of the person cited;

(2) The good faith of the person cited;

(3) The gravity of the violation;

(4) The prior record of the violator in complying or failing to comply with this Article or a rule adopted pursuant to this Article; and

(5) The risk of harm caused by the violation.

Chapter 150B of the General Statutes governs the imposition of a civil penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Secretary or the Attorney General.

"**§ 66-58.7. Criminal penalty.**

(a) Any person who willfully violates any provision of this Article, or who willfully violates any rule or order under this Article, is guilty of a Class I felony.

(b) The Secretary shall provide such evidence as is available concerning criminal violations of this Article or of any rule or order promulgated hereunder to the proper district attorney, who may, with or without such a reference, institute appropriate criminal proceedings under this Article.

(c) Nothing in this Article limits the power of the State to punish any person for any conduct which constitutes a crime by statute or common law.

"**§ 66-58.8. Exemptions.**

This Article shall not apply to any of the following:

(a) Electronic signatures and facsimile signatures that are otherwise allowed by law.

(b) The execution of documents filed with, issued, or entered by a court of the General Court of Justice.

(c) Transactions where a public agency is not a party.

"**§ 66-58.9. Rulemaking.**

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

(1) Definitions, including but not limited to more technical definitions of 'certification authority' and 'electronic signature';

(2) The creation, accreditation, bonding, licensing, operation, regulation, and sanctioning of certification authorities;

(3) The imposition of licensing and renewal fees in amounts not to exceed five thousand ($5,000) dollars per year; and

(4) The imposition of civil monetary penalties for noncompliance with this Article or the rules promulgated thereunder.

(b) Notwithstanding G.S. 150B-21.1(a), the Secretary may adopt temporary rules to implement the certification authority technology provisions of this Article using the procedure for adoption of temporary rules under G.S. 150B-21.1(a2).

(c) The Secretary shall deposit licensing and renewal fees in the General Fund.

Section 2. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules to implement the certification technology provisions of Article 11A

of Chapter 66 of the General Statutes. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;

(2) Accept oral and written comments on the proposed temporary rule; and

(3) Hold at least one public hearing on the proposed temporary rule. When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision this Chapter, the Codifer of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

Section 3. In developing initial rules pursuant to this act, the Secretary shall consider national standards for ensuring the integrity of electronic signatures and shall seek the advice of public and private agencies, including but not limited to the Information Resource Management Commission. Before adoption of the rules, the Secretary shall hold at least one public hearing to receive comments.

Section 4. The Legislative Research Commission shall study whether the scope of Article 11A of Chapter 66 of the General Statutes should be expanded to include electronic commerce not involving a public agency. The Commission shall report its recommendations to the 1999 General Assembly.

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

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

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.

The General Assembly of North Carolina enacts:

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

"ARTICLE 11A.

"Electronic Commerce in Government.

"**§ 66-58.1. Title; purpose.**

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

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

"**§ 66-58.2. Definitions.**

The following definitions apply in this Article:

(1) 'Certification authority' means a person authorized by the Secretary of State to facilitate electronic commerce by vouching for the connection between a person and that person's electronic signature.

(2) 'Electronic signature' means any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature.

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

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

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

(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 pursuant to this Article.

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

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

"**§ 66-58.4. Rulemaking.**

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

(1) Definitions, including but not limited to more technical definitions of 'certification authority' and 'electronic signature';

(2) The creation, accreditation, licensing, operation, regulation, and sanctioning of certification authorities;

(3) The imposition of licensing and renewal fees in amounts reasonably related to the cost of administering this Article; and

(4) The imposition of civil monetary penalties for noncompliance with this Article or the rules promulgated thereunder.

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

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

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

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

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

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

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

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

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

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

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

"**§ 66-58.7. Exemptions.**

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

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

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

EXPLANATION OF HOUSE BILL 1356:
Electronic Commerce Act

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 8, 1998
SPONSOR: Representative Reynolds

House Bill 1356 enacts a new article in the Commerce and Business Chapter of the General Statutes called the Electronic Commerce Act, effective when it becomes law. House Bill 1356 was recommended by the Legislative Research Commission Committee on Information and Technology, and has been given a favorable report in House Judiciary I.

The purpose of this Act is to authorize the use and acceptance of electronic signatures by all State agencies, boards, commissions or institutions and by local political subdivisions including cities, counties, school districts or public service districts, when one of these public entities is a party to a contract, transaction, or filing. An "electronic signature" is defined as "any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature." An electronic signature is valid if the public entity requesting or requiring the signature accepts electronic signatures and if the signature meets the following requirements:

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

The Act gives the Secretary of State authority to promulgate rules to carry out 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 rules must be adopted by October 30, 1998, and at least one public hearing is required before their adoption. The 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 Act authorizes the Secretary of State to assess a civil penalty of not more than $100,000 against a person who violates the Act or adopted rule. The civil penalties are deposited in the General Fund. The courts also have the authority and jurisdiction to enjoin or restrain violations of the Act.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1356

SHORT TITLE: Electronic Commerce Act

SPONSOR(S): Representatives Reynolds, Baker, Brawley, Clary, Cole, Dickson, Earle, Eddins, Gray, Hurley, McComas, Rayfield, Sexton, Shubert, Tolson, Weatherly, and G. Wilson

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
EXPENDITURES	$75,000	$75,000	$75,000	$75,000	$75,000

POSITIONS: 1

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State

EFFECTIVE DATE: Upon Passage.

BILL SUMMARY:
Amends Section 1, Chapter 66 of the General Statutes by adding Article 11A. The new Article facilitates electronic commerce with and by public entities of the State of North Carolina by recognizing the validity of electronic signatures. Article 11A further authorizes the Secretary of State to regulate electronic signatures and certification authorities, and to assess a civil penalty (up to $100,000) against any person who violates a provision of the Article.

ASSUMPTIONS AND METHODOLOGY:
The bill requires the Department of the Secretary of State to perform a new regulatory function in a fluid and relatively complex technological milieu. The Department of the Secretary of State requests an additional position to perform the work required by the new function. The function

requires a blend of legal/regulatory and technical skills. The individual selected for the position would be required to participate in establishing rules for the use of electronic signatures. Further, the individual would be required to evaluate and monitor certification authorities. The Department requests $75,000 for the new position.

Public-sector experience with the use of electronic signatures remains limited. As a result, a reliable estimate of the potential revenue from penalties assessed (as authorized by this bill) does not exist at this time.

TECHNICAL CONSIDERATIONS:
None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Dwayne Pinkney
APPROVED BY:
DATE: June 8, 1998

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1356 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Hackney
Sen.)

moves to amend the bill on page 1, line 3

( ) WHICH CHANGES THE TITLE

by rewriting such line to read as follows:

"Article, with intent to defraud, is guilty of a Class I felony."

deleted // and on line 16 by rewriting such line to read as follows:

"(b) The execution of documents entered."

Part 1 = adopted
Part 2 = withdrawn

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1356-CSRU-002 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Nesbitt
Sen.)

moves to amend the bill on page 3, line 27

( ) WHICH CHANGES THE TITLE

by deleting the phrase "hundred thousand dollars ($100,000)" and inserting the phrase "thousand dollars ($1,000)".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1229
Second Edition Engrossed 5/27/98

Short Title: Abolish Inheritance Tax Waivers. (Public)

Sponsors: Senators Kerr, Cochrane, Dalton, Hartsell, Hoyle, and Webster.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO ABOLISH TAX WAIVERS FOR THE TRANSFER OR DELIVERANCE OF A DECEDENT'S PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2.1 reads as rewritten:

"**§ 105-2.1. ~~Internal Revenue Code definition.~~ Definitions.**

~~As used in this Article, the term "Code" has the same meaning as in G.S. 105-228.90.~~ The following definitions apply in this Article:

(1) Code. -- Defined in G.S. 105-228.90.

(2) Collector. -- Defined in G.S. 28A-1-1.

(3) Personal representative. -- Defined in G.S. 28A-1-1."

Section 2. G.S. 105-11 is repealed.

Section 3. G.S. 105-11.1 is repealed.

Section 4. G.S. 105-12 is repealed.

Section 5. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-13.1. Notices to Secretary of certain payments.**

(a) Life Insurance Policy. -- When a company pays the proceeds of a life insurance policy as a result of the death of an individual who owned the policy and was the named insured under the policy, the company must notify the Secretary of the payment on a form approved by the Secretary unless one of the following applies:

(1) The payment is to the surviving spouse.

(2) The payment is to a Class A beneficiary, as described in G.S. 105-4(a), and the proceeds of the policy do not exceed one hundred thousand dollars ($100,000).

(b) Annuity and IRA. -- When a company pays the initial payment of an annuity or the initial distribution of an IRA as a result of the death of the annuitant or owner of the IRA, the company must notify the Secretary of the payment or distribution on a form approved by the Secretary unless one of the following applies:

(1) The payment or distribution is to the surviving spouse.

(2) The payment or distribution is to a Class A beneficiary, as described in G.S. 105-4(a), and the total amount to be paid under the annuity or distributed under the IRA does not exceed one hundred thousand dollars ($100,000)."

Section 6. G.S. 105-20 reads as rewritten:

"**§ 105-20. ~~Legacy charged upon real estate, heir or devisee to deduct and pay tax; limitation; Inheritance or Estate Tax Waiver.~~ Taxes are a lien on real property in an estate.**

~~Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee, shall deduct the tax therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator or the Secretary of Revenue, and the same shall remain a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decrees of the court in the same manner as the payment of such legacy may be enforced: Provided, that all taxes imposed by this Article shall be a lien upon the real and personal property of the estate on which the tax is imposed or upon the proceeds arising from the sale of such property from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the State: Provided further, that no lien for inheritance or estate taxes shall attach or affect the land after 10 years from the date of death of the decedent: Provided further, that no taxes imposed by this Article shall be a lien upon real property that is released by an Inheritance or Estate Tax Waiver issued by the Secretary of Revenue. An Inheritance or Estate Tax Waiver issued by the Secretary of Revenue and bearing the signature or official facsimile signature of the Secretary of Revenue covering real property may be registered in the office of the Register of Deeds of the county or counties where the real estate described in the waiver is located. No formalities as to acknowledgement, probate, or approval by any officer shall be required as a condition to such registration. An Inheritance or Estate Tax Waiver so registered shall be conclusive evidence that the real property described in such waiver is not subject to the lien of any taxes imposed by this Article.~~

The taxes imposed by this Article on the transfer of real or personal property are a lien on the real property in an estate and on the proceeds arising from the sale of real property. The lien is created at the date of death of the decedent and continues until the tax is paid, 10 years have elapsed since the date of the decedent's death, or the lien is released. A lien is released when the Secretary issues a tax waiver for the lien, the Secretary issues an inheritance tax certificate, or the personal representative files

a tax certification with the clerk of superior court. A tax waiver may be filed in the office of the register of deeds of each county where the property is located. No formalities as to acknowledgment, probate, or approval by any officer are required as a condition to filing. The filing of a tax waiver is conclusive evidence that the real property described in the waiver is not subject to a lien for taxes imposed by this Article."

Section 7. G.S. 105-24 reads as rewritten:

"**§ 105-24. ~~Tax waiver required for transfer of decedents' property in some cases; inventory of lock boxes; withdrawal of bank deposits, etc., payable to either husband or wife or survivor.~~ Inventory of safe-deposit boxes.**

~~(a) No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest assessed under this Article on property transferred by the decedent; but the Secretary of Revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Securities whose declaration date is after the decedent's death, or interest that accrues after the decedent's death on money on deposit at a bank, savings and loan association, credit union, or other corporation, however, may be transferred or delivered without retaining a portion of the property for the payment of taxes or interest and without obtaining the written consent of the Secretary to the delivery or transfer. Provided: The clerk of superior court of the resident county of a decedent may authorize in writing one or more banks, safe deposit companies, trust companies or any other institutions to transfer to the properly qualified representative of the estate any funds on deposit in the name of the decedent or the decedent and one or more persons when the aggregate amount of all such deposits in all such institutions is two thousand dollars ($2,000) or less, and when such deposit or deposits compose the total cash assets of the estate. Such authorization shall have the same force and effect as when issued in writing by the Secretary of Revenue.~~

(b) Except as provided in subsection (c) of this section, every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting ~~lock~~ safe-deposit boxes for the safekeeping of valuable papers and personal effects, or having in their possession or supervision in such ~~lock~~ safe-deposit boxes such valuable papers or personal effects shall, upon the death of any person using or having access to such ~~lock~~ safe-deposit box, as a condition precedent to the opening of such ~~lock~~ safe-deposit box by the ~~executor, administrator,~~ personal ~~representative lessee~~ representative, collector, lessee, or cotenant of such deceased person, require the presence of the clerk of the superior

court of the county in which ~~such lock~~ the box is located. It shall be the duty of the clerk of the superior court, or his representative, in the presence of ~~an officer or~~ a representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of ~~such lock~~ the box and to furnish a copy of such inventory ~~to the Secretary of Revenue,~~ to the ~~executor, administrator,~~ personal representative, collector, lessee, or cotenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person, or persons having possession of ~~such lock~~ the safe-deposit box; provided, that for ~~lock~~ boxes to which decedent merely had access the inventory shall include only assets in which the decedent has or had an interest. ~~Immediately after~~ After the clerk of superior court has made an inventory of the contents of the ~~lock~~ safe-deposit box, the safe deposit company, trust company, corporation, bank or other institution, or person shall, upon request, release to the ~~lessee~~ personal representative, collector, lessee, or cotenant of the ~~lock~~ box ~~any life insurance policy stored in the lock box for delivery to the beneficiary named in the policy. No other contents of the lock box may be released except Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the Secretary of Revenue a notice, in such form as the Secretary of Revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply.~~ the contents of the box.

(c) Notwithstanding the provisions of subsection (b) of this section, if the ~~properly qualified personal representative of an estate~~ personal representative, collector, lessee, or cotenant believes upon reliable information that a ~~lock~~ safe-deposit box to which the decedent had access is empty, ~~the personal representative~~ that person may so certify to the clerk of superior court of the county in which the ~~lock~~ box is located. Upon receipt of this certificate, the clerk may authorize in writing the personal ~~representative or the personal representative's named agent~~ representative, collector, lessee, or cotenant to open the ~~lock~~ box outside of the clerk's presence. The ~~personal representative or the personal representative's agent~~ authorized person shall open the ~~lock~~ box in the presence of ~~an officer or~~ a representative of the institution having control or custody of the ~~lock~~ box, and ~~the personal representative or the personal representative's agent~~ shall certify to the clerk whether the ~~lock~~ box is or is not empty. The certificate shall include the name of the ~~officer or~~ representative of the institution who was present at the time the ~~lock~~ box was opened and shall be signed by the ~~officer or~~ representative to indicate that ~~he or she~~ the representative was present. ~~If the lock box is empty, no tax waiver will be required from, and no notice given to, the Secretary of Revenue.~~ If the ~~lock~~ safe-deposit box is not empty, the ~~officer or~~ representative of the institution shall close the ~~lock~~ box at once and the ~~lock~~ box may be reopened only in accordance with subsection (b) of this section.

~~(d) Notwithstanding any of the provisions of this section, in any case where a bank deposit has been heretofore made or is hereafter made, or where savings and loan stock has heretofore been issued or is hereafter issued, in the names of two or more persons and payable to either or the survivor or survivors of them, such bank or~~

~~savings and loan association may, upon the death of either of such persons, allow the person or persons entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and the balance thereof shall be retained by the bank or savings and loan association to cover any taxes that may thereafter be assessed under this Article. When it is ascertained that there is no liability of such deposit or stock for taxes under this Article, the Secretary of Revenue shall furnish the bank or savings and loan association his written consent for the payment of the retained percentage to the person or persons entitled thereto by law; and the Secretary of Revenue may furnish such written consent to the bank or savings and loan association upon the qualification of a personal representative of the deceased. If the person entitled to funds in an account is the surviving spouse and the account is a joint account of the surviving spouse and the decedent with right of survivorship, no tax waiver is required from the Secretary of Revenue to release the funds in the account.~~

(e) Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this Article on property transferred by the decedent. In any action brought under this provision it shall be a sufficient defense that the delivery or transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without knowledge of circumstances sufficient to place the defendant on inquiry."

Section 8. G.S. 105-30 is repealed.

Section 9. G.S. 105-31 reads as rewritten:

"**§ 105-31. ~~Additional remedies for enforcement of tax.~~ Action to collect tax due.**

~~In addition to all other remedies which may now exist under the law, or may hereafter be established, for the collection of the taxes imposed by the preceding sections of this Article, the tax so imposed shall be a lien upon all of the property and upon all of the estate, with respect to which the taxes are levied, as well as collectible out of any other property, resort to which may be had for their payment; and the said taxes shall constitute a debt, which may be recovered in an action brought by the Secretary of Revenue in any court of competent jurisdiction in this State, and/or in any court having jurisdiction of actions of debt in any state of the United States, and/or in any court of the United States against an administrator, executor, trustee, or personal representative, and/or any person, corporation, or concern having in hand any property, funds, or assets of any nature, with respect to which such tax has been imposed. No title or interest to such estate, funds, assets, or property shall pass, and no disposition thereof shall be made by any person claiming an interest therein until said taxes have been fully paid or until the Secretary of Revenue has released such property by the issuance of an Inheritance or Estate Tax Waiver.~~ Taxes payable under this Article are a debt that may be recovered in an action brought by the Secretary against the personal representative or against any other person having in hand any property with respect to which the taxes have been imposed."

Section 10. G.S. 25-4-405(c) reads as rewritten:

"(c) A transaction, although subject to this Article, is also subject to G.S. ~~105-24,~~ 41-2.1, 53-146.1, 54-109.58, and 54B-129, and in case of conflict between the provisions of this section and either of those sections, the provisions of those sections control."

Section 11. G.S. 41-2.1(f) reads as rewritten:

"(f) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24 relating to the administration of the inheritance laws or any other~~ provisions of the law relating to inheritance taxes."

Section 12. G.S. 41-2.2(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-2, 105-11, and 105-24, relating to the administration of the inheritance tax laws, or any other~~ provisions of the law relating to inheritance taxes."

Section 13. G.S. 53-146.1(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the bank in its relationship with ~~such~~ joint owners of deposit ~~accounts as herein provided.~~ accounts."

Section 14. G.S. 53-146.2(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate taxes."

Section 15. G.S. 54-109.58(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the credit union in its relationship with ~~such~~ joint owners of ~~accounts as herein provided.~~ accounts."

Section 16. G.S. 54B-129(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of law relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the association in its relationships with ~~such~~ joint owners of deposit ~~accounts as herein provided.~~ accounts."

Section 17. G.S. 54B-130(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate taxes."

Section 18. G.S. 54C-165(b) reads as rewritten:

"(b) ~~Nothing in this section is construed to~~ This section does not repeal or modify any ~~provision of G.S. 105-24 relating to the administration of the estate tax laws of this State or any other~~ law relating to estate taxes. This section ~~shall regulate, govern, and protect~~ regulates and protects the savings bank in its relationships with the joint owners of deposit accounts."

Section 19. G.S. 54C-166(d) reads as rewritten:

"(d) ~~Nothing in this section is construed to~~ This section does not repeal or modify any ~~provision of G.S. 105-24 relating to the administration of estate tax laws of this State or any other~~ law relating to estate taxes."

Section 20. This act becomes effective July 1, 1998, and applies to estates of decedents who die on or after that date.

EXPLANATION OF SENATE BILL 1229 (2nd Ed):
Abolish Inheritance Tax Waivers

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 16, 1998
SPONSOR: Senator Kerr

Senate Bill 1229 is a recommendation of the Revenue Laws Study Committee. The Second Edition differs from the original bill in that the effective date is moved back from October 1, 1998, to July 1, 1998.

Current Law

G.S. 105-24 currently requires that when a person dies, the Department of Revenue must be notified of any accounts, stocks, and bonds in the name of the decedent and of the contents in decedent's safe-deposit box. The Department then issues inheritance tax waivers authorizing the bank or financial institution in possession of the decedent's property to transfer or release the property. Accounts held by the decedent and spouse with right of survivorship do not require a waiver before transfer.

Senate Bill 1229

The Bill deletes all language in G.S. 105-24 requiring the inheritance tax waivers, and repeals sections of the Inheritance Tax Article regarding penalties for failure to obtain waivers and forms required for the waivers. The Bill retains the requirement that the Secretary of Revenue must be notified of payments of proceeds of a life insurance policy when the payments are the result of the death of the individual who owned the policy and was the named insured under the policy. Notification is also required of the initial payment of an annuity or initial distribution of an IRA when the payment or distribution is the result of the death of the annuitant or owner of the IRA. However, notification is not required in the following instances:

1. When the payment or distribution is to a surviving spouse.
2. When the payment or distribution is to a class A beneficiary and the proceeds of the policy or the total amount paid under the annuity or distributed under the IRA do not exceed $100,000.

Senate Bill 1229 clarifies that inheritance taxes are a lien on real property in the decedent's estate and makes technical changes to the Inheritance Tax Article.

The Department of Revenue supports the abolishment of inheritance tax waivers, because the lien on the decedent's property is adequate security for payment of inheritance taxes. Also, most estates do not have to pay inheritance taxes. The abolishment of tax waivers also relieves the burden on the public to apply for and receive tax waivers when administering a decedent's estate. The Department feels that the tax waiver requirement creates a burden to the public that is much greater than any benefit derived.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1229

SHORT TITLE: Abolish Inheritance Tax Waivers

SPONSOR(S): Senators Kerr, Cochrane, Dalton, Hartsell, Hoyle, and Webster.

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	No expected General Fund impact				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Inheritance and Estate Tax Divisions of the Department of Revenue.

EFFECTIVE DATE: October 1, 1998

BILL SUMMARY: When a person dies, current law requires that the Department of Revenue be notified of any accounts, stocks, and bonds held in the name of the decedent. They must also be informed of the contents in the decedent's lock or safe-deposit box. The Department then issues inheritance tax waivers authorizing the bank or financial institution in possession of the decedent's property to transfer or release the property. The bill deletes all language in G.S. 105-24 requiring inheritance tax waivers. The bill retains the requirement that the Secretary of Revenue be notified of payments from certain life insurance policies, annuities, and IRAs. Notification is not required if the payment or distribution is to a surviving spouse, or if a payment of less than $100,00 is made to a Class A beneficiary. This bill is a recommendation of the Revenue Laws Study Committee.

ASSUMPTIONS AND METHODOLOGY: No revenue impact is expected as a result of this proposal.

FISCAL RESEARCH DIVISION
733-4910

PREPARED BY: Warren Plonk and Linda Struyk Millsaps
APPROVED BY: Tom Covington

DATE: May 26, 1998

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

June 18, 1998
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Catherine Heed	NC ASA
Joan Myers	NCETA
Doug Lassiter	McCleer Consulting
Bernard Allen	SOS
Scott Templeton	Sec State
Matt Osborne	AOC
Paul Stock	NC Bankers Assn
Heather Faul	OSA
Bill Dunn	DOR
Lennie Collins	DOR
Charles Hawkes	DOR
Greg Radford	DOR

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mike Olsen	NC State AFLCIO
VL McBride	~~NCDA~~
Mary Monteith	Poyner Spruill
Paul Gwin	OSBM
Doug Rogers	NCDOT
Carrie Altman	Science + Tech. Intern
DAN GERLACH	NC BTC
Alge Toomer	NYC
Martha Gran	DOA
Lee Kindberg	Hoechst Celanese
BILL SCOGGIN	NC BAR ASSOC.
Roger Bone	Bone + Assoc — Tobacco

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Joe McClees	McCleesConsulting
Amy Jo Bain	Smith Anderson
John Palumbo	AT&T
Lisa Runkle	WCSR
Gary Harris	NC Petroleum Mkts.
Andy Romanet	N.C.L.M.
Margaret Carpenter	Visitor
Bonnie Scarboro	Good Neighbor
Tom Mayo	Moore & Van Allen
John Phelps	NC League of Municipalities
Stacey Slaughter	Legislative Intern

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS

MINUTES

COMMITTEE ON FINANCE

WEDNESDAY, JUNE 17, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Wednesday, June 17, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken (roll list denotes members present).

Rep. C. Wilson called the meeting to order and introduced Pages.

SB-1222 MECK NECK

Sen. Odom explained his bill. Rep. Decker moved for a favorable report. Having no discussion, the vote was taken and passed with a favorable report.

HB-1327 CENTENNIAL CAMPUS

Rep. Dickson explained the comprise that the sub-sub-committee agreed upon. Rep. Brown moved for a favorable report, unfavorable to the original bill. The vote was taken and passed. Rep. Dickson thanked his sub-sub-committee members for their hard work and agreement to help pass this important legislation.

HB-1748 EXEMPT CORP. WITHOUT PRESENCE

Rep. Creech explained this bill and requested that it be sent to the Revenue Laws Study Committee. Rep. Dickson moved for adoption of the Proposed Committee Substitute for discussion. Ms. Cindy Avrette, Research Division, gave a further explanation. Ms. Sabre Fairies, Assistant Secretary, Department of Revenue, addressed members and spoke on the bill. Rep. Hackney questioned Ms. Fairies regarding Nexus and she responded. Rep. Hackney questioned Rep. Creech about in-state corporations. Rep. Creech explained again why he feels this should be studied in more detail. Rep. Wilson questioned staff about title and Ms. Avrette responded and gave a clarification. Ms. Fairies gave a more detailed clarification of their interpretation. Rep. Dedmon spoke and moved for a favorable report, unfavorable to the original bill. Rep. Cunningham questioned staff and Ms. Avrette responded. Rep. Cunningham had further questions for DOR and Ms. Fairies responded. Rep. Hightower had concerns about the impact of the fiscal loss. Rep. Creech clarified his comments. Ms. Fairies spoke again. Rep. Dedmon made a

substitute motion to refer this to Revenue Laws Study Committee. Chairman Wilson suggested this be sent to a sub-sub-committee and Revenue Laws study it. Rep. Cunningham spoke. Chairman Wilson explained why this should be recommended to Revenue Laws. Debate continued among members. Rep. Jarrell questioned definitions on the explanation and urged sending to Revenue Laws Study Committee. Rep. Luebke spoke and Ms. Fairies addressed his comments. Rep. Luebke favors sending this to Revenue Laws. Rep. Brawley spoke and made a substitute motion, then withdrew his motion. Rep. McComas and Rep. Creech spoke. Rep. Hunter asked why Department of Revenue requested a new rule. Ms. Fairies responded about the growth and interstate banking restructuring. Rep. Creech also spoke. Rep. Russell and Rep. Capps spoke. Rep. Capps feels that the General Assembly should make new rules, not Department of Revenue. Rep. Dickson had comments. Rep. Baddour feels the DOR should be allowed to move on this issue. Rep. Womble feels that Revenue Laws should study this. He also questioned some clarification and Ms. Avrette assisted. Rep. Carpenter spoke and recommended a motion be made for this to be studied by Revenue Laws. Rep. Nichols spoke. A vote was taken this will be recommended to let the Revenue Laws Study Committee study this.

HB-1248 EXEMPT TOBACCO ASSISTANCE PAYMENTS

Rep. Dickson moved for adoption for the adoption of the Proposed Committee Substitute for discussion. So moved. Rep. Baker explained and urged adoption. Rep. Brown spoke in favor of the bill and moved for a favorable report, unfavorable to the original bill. Rep. Hensley feels this is premature because Congress hasn't taken action. Rep. Baker addressed his comments. Rep. Hackney questioned this in comparison to the dairy farmers buy out. Mr. Richard Bostic, Fiscal Research Division, responded. He explained that a fiscal note could not be prepared and gave rough estimates. Rep. Hackney spoke again. Mr. Billy Daniel, Department of Revenue addressed this from their point of view. He advised they would need to do more research for data. Rep. Nichols, Rep. Decker and Rep. Goodwin spoke. Ms. Avrette responded to their comments/concerns.

Time expired and the meeting adjourned at 9:50 a.m.

Connie C. Wilson
Rep. C. Wilson, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

WEDNESDAY, JUNE 17, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

Rep. C. Wilson

BILLS FOR DISCUSSION:

HB-1248-Exempt Tobacco Assistance Payments	Rep. Baker
HB-1383-Meck Neck	Rep. Earle
HB-1737-Centennial Campus	Rep. Dickson
HB-1748-Exempt Corp. Without Presence	Rep. Creech
SB-1222-Meck Neck	Sen. Odom

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1248*
Committee Substitute Favorable 6/4/98
Proposed Committee Substitute H1248-PCS9010-LB

Short Title: Exempt Tobacco Assistance Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM INCOME TAX FEDERAL PAYMENTS TO TOBACCO ALLOTMENT HOLDERS, TOBACCO WORKERS, AND TOBACCO FARMERS AS COMPENSATION FOR LOSSES DUE TO FEDERAL LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(17) The amount paid to the taxpayer by the federal government during the taxable year as reimbursement for loss of tobacco quotas."

Section 2. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(15) The amount paid to the taxpayer by the federal government during the taxable year for any of the following:

a. Reimbursement for loss of tobacco quotas.

b. Transition assistance for tobacco workers.

c. Higher education assistance grants for members of tobacco farm families granted because of legislation specific to the tobacco industry."

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1248*
Committee Substitute Favorable 6/4/98

Short Title: Exempt Tobacco Assistance Payments. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM INCOME TAX FEDERAL PAYMENTS TO TOBACCO ALLOTMENT HOLDERS, TOBACCO WORKERS, AND TOBACCO FARMERS AS COMPENSATION FOR LOSSES DUE TO THE FEDERAL TOBACCO SETTLEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(17) The amount paid to the taxpayer by the federal government during the taxable year under the federal Long-Term Economic Assistance for Farmers (LEAF) Act as reimbursement for loss of tobacco quotas."

Section 2. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(15) The amount paid to the taxpayer by the federal government during the taxable year under the federal Long-Term Economic Assistance for Farmers (LEAF) Act as any of the following:

a. Reimbursement for loss of tobacco quotas.

b. Transition assistance for tobacco workers.

c. Higher education assistance grants for members of tobacco farm families."

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1383*
Committee Substitute Favorable 6/8/98

Short Title: Meck Neck. (Local)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE AREA OF MECKLENBURG COUNTY KNOWN AS MECK NECK TO IREDELL COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The boundary line between Iredell County and Mecklenburg County is hereby changed and relocated so as to divest Mecklenburg County of the territory described below, which territory shall vest in and become part of Iredell County:

That area commonly known as the Meck Neck, being all that land in Mecklenburg County which is connected by land to Iredell County and not connected by land to Mecklenburg County, and the area of Lake Norman in Mecklenburg County around such land, all as more particularly described as follows:

BEGINNING at Latitude 35° at 29.466" North and Longitude 80° at 56.597" West (the "present location of Fixed Lighted Marker D1" as established by the global positioning system, and being approximately .3 mile south of the southerly most point of the Meck Neck Land Area); thence in a northeasterly direction in a straight line which passes through Latitude 35° at 30.024" North and Longitude 80° at 55.736" West (the "present location of Fixed Lighted Marker D5" as established by the global positioning system) to a point in the Mecklenburg County-Iredell County line located near where the old channel of Reeds Creek intersects said line; thence in a westerly direction with the Mecklenburg County-Iredell County line to the point where said line intersects the Lincoln County line; thence in a southerly direction with the Mecklenburg County-Lincoln County line to a point where a straight line

from the present location of Fixed Lighted Marker D5 to the present location of Fixed Lighted Marker D1 extended would intersect with the Mecklenburg County-Lincoln County line; thence in a northeasterly direction with said straight line from the present location of Fixed Lighted Marker D5 to the present location of Fixed Lighted Marker D1 extended to the Mecklenburg County-Lincoln County Line to the present location of Fixed Lighted Marker D1, the point or place of BEGINNING.

Section 2. (a) On and after July 1, 1998, all papers, documents, and instruments required or permitted to be filed or registered, involving residents and property in the area described in Section 1 of this act, which previously would have been recorded in Mecklenburg County shall be recorded in Iredell County.

(b) All public records related to residents and property in the area described in Section 1 of this act which were filed or recorded prior to July 1, 1998, in Mecklenburg County, shall remain in Mecklenburg County where filed or recorded, and such records shall be valid public records as to the property and persons involved even though they are recorded in Mecklenburg County, a county where the property is no longer located.

(c) On and after July 1, 1998, all real and personal property in the area described in Section 1 of this act which was subject to ad valorem taxation in that area on January 1, 1998, shall be subject to ad valorem taxes in Iredell County for the fiscal year beginning July 1, 1998, to the same extent as it would have been had it been located in Iredell County on January 1, 1998, except as hereinafter provided with respect to classified registered motor vehicles. On July 1, 1998, the Mecklenburg County Tax Administrator shall transfer to the Iredell County Tax Assessor the ad valorem tax listings and valuations for all real and personal property subject to ad valorem taxation in the area described in Section 1 except classified motor vehicles which were registered in Mecklenburg County prior to July 1, 1998.

For the fiscal year which begins July 1, 1998, all real and personal property in the area described in Section 1 of this act which was subject to ad valorem taxation in that area on January 1, 1998, shall be assessed and taxed as follows:

(1) The ad valorem property taxes assessed on all classified registered motor vehicles registered or listed between January 1, 1998, and June 30, 1998, shall be collected by the Mecklenburg County Tax Collector and all such taxes shall be retained by Mecklenburg County. The taxes on all classified registered motor vehicles registered after June 30, 1998, shall be assessed and collected by the Iredell County Tax Department.

(2) The values established by the Mecklenburg County Tax Administrator on all personal property other than classified registered motor vehicles shall be used by the Iredell County Tax Assessor without adjustment in computing taxes due for the fiscal year beginning July 1, 1998. All such taxes shall be assessed and collected by the Iredell County Tax Department.

(3) The values established by the Mecklenburg County Tax Administrator on all real property shall be reduced by the Iredell County Tax Assessor by applying the difference between one hundred percent (100%) of such values and the Iredell median ratio, as established by the Sales Assessment Ratio Study compiled by the North Carolina Department of Revenue as of January 1, 1998. The taxes determined by applying this method will be collected and retained by the Iredell County Tax Collector.

(4) Beginning January 1, 1999, all property in the area described in Section 1 which is subject to ad valorem taxation shall be listed, assessed, and taxed by Iredell County in the same manner as is prescribed by law for all other property located in Iredell County.

(5) The final tax values of property subject to ad valorem taxation in the area described in Section 1 as of January 1, 1998, shall be determined by the Mecklenburg County Tax Administrator or the Mecklenburg County Board of Equalization and Review. Appeals to the North Carolina Property Tax Commission or to the courts shall be defended by Mecklenburg County, and Iredell County shall reimburse Mecklenburg County for all costs and expenses, including attorneys' fees, incurred in connection with such appeals.

(6) Any unpaid taxes or tax liens for the fiscal year ending June 30, 1998, or for prior years on property subject to taxation in the area described in Section 1 of this act shall continue to be valid and enforceable by Mecklenburg County, including the foreclosure remedies provided for in G.S. 105-374 and G.S. 105-375, and the remedies of attachment and garnishment provided for in G.S. 105-366 through G.S. 105-368. Mecklenburg County shall supply Iredell County with a list of unpaid taxes as of July 1, 1998. Any such taxes collected by Iredell County shall be promptly paid to Mecklenburg County including accrued interest.

(d) On July 1, 1998, Iredell County shall become fully responsible for completing the Street Assessment Program begun by Mecklenburg County pursuant to authority granted to counties by Article 9 of Chapter 153A of the General Statutes to improve Blarney Road and Gainswood Drive to meet the State's requirements for adding such roads to the State Secondary Road System, said roads being located within the area described in Section 1 of this act. To the extent not already completed by July 1, 1998, Iredell County shall become responsible for preparing the Preliminary Assessment Roll, conducting the hearing on the Preliminary Assessment Roll Resolution, adopting the Final Assessment Roll Resolution, publishing the Notice of Confirmation of the Assessment Roll, and collecting the unpaid assessments. Should Mecklenburg County have paid the Department of Transportation for the improvement work performed on said roads before the date that the area described in Section 1 of this act is transferred to Iredell County, Iredell County will reimburse Mecklenburg County for said cost, to the extent not

reimbursed by the property owners, within 90 days of said transfer of the area described in Section 1 of this act to Iredell County.

(e) No cause of action, including criminal actions, involving persons or property in that area described in Section 1 of this act which is pending on July 1, 1998, shall be abated, and such actions shall continue in Mecklenburg County.

(f) The Board of Elections of Mecklenburg County shall immediately after July 1, 1998, transfer the voter registration records pertaining to persons residing in the area described in Section 1 of this act to the Iredell County Board of Elections, and thereafter the registered voters so transferred shall be validly registered to vote in Iredell County.

(g) The Jury Commission of each county shall revise its jury lists to add to or eliminate therefrom those persons subject to jury duty who reside in the area described in Section 1 of this act, said revised jury lists to be effective July 1, 1998.

(h) The area described in Section 1 of this act shall be transferred into Superior Court District 22, District Court District 22, and Prosecutorial District 22. The area described in Section 1 of this act shall remain in the same Congressional District, the same State House of Representatives District, and the same State Senate District.

Section 3. The Meck Neck Transfer Joint Undertaking Agreement made as of November 18, 1997, by and between Iredell County and Mecklenburg County is ratified.

Section 4. Iredell County shall pay, on behalf of residents of the Meck Neck, all tuition charges which might have been imposed by the Iredell County Board of Education on children living in the Meck Neck who attended schools operated by the Iredell County Board of Education prior to July 1, 1998.

Section 5. Any child who was a resident of the area annexed by Section 1 of this act on its date of ratification and who was a student in the Charlotte-Mecklenburg school system during the 1997-98 school year, and the siblings of any such person, may attend school in the Charlotte-Mecklenburg school system without necessity of a release or payment of tuition. Such student, while attending the Charlotte-Mecklenburg school system, shall be considered a resident of Mecklenburg County for all public school purposes, including transportation, athletics, and funding formulas. Notice must be given to both school systems by the parent or guardian in order to exercise the privilege granted by this section.

Section 6. This act becomes effective July 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1383 (Proposed Committee Substitute)

SHORT TITLE: Meck Neck

SPONSOR(S): Representative Earle

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03

REVENUES

No expected General Fund impact
Will redistribute approximately $660,000 - $760,000 in revenues and expenditures between Mecklenburg and Iredell Counties.

EXPENDITURES

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Mecklenburg County, Charlotte-Mecklenburg Schools, Iredell County, Statesville-Iredell Schools, Department of Public Instruction.

EFFECTIVE DATE: July 1, 1998

BILL SUMMARY: The bill will change the territory of Mecklenburg and Iredell Counties by incorporating into Iredell County the "Meck Neck" area (area of Mecklenburg County connected by land to Iredell County but not connected by land to Mecklenburg County) and certain portions of Lake Norman. The bill includes provisions dealing with the transfer of public school students, jury lists, and voting regulations. It mandates that all public records for the area filed after July 1, 1998 should be filed in Iredell County. All real and personal property in the Meck Neck area, that was subject to ad valorem tax on January 1, 1998, will be subject to tax in Iredell County for the fiscal year beginning July 1, 1998, with some being subject to an adjustment factor. Mecklenburg County will retain property taxes on motor vehicles registered or listed between January 1 and June 30, 1998. The bill also transfers responsibility for a street assessment program in the area to Iredell, and clarifies that pending legal causes of action will continue in Mecklenburg County. Court jurisdictions will also be transferred.

ASSUMPTIONS AND METHODOLOGY: Because there are only 12 public school students in the Meck Neck area, and all have the option of staying in Mecklenburg, it is assumed that there will be no significant cost to the state associated with student transfers. This is the only item in the bill that could have an impact on the General Fund.

The county impact assumes the following:

1) **Property taxes and valuation**. According to the Mecklenburg County Manager, the total value of property in the "Meck Neck" area is approximately $88 million. The current property tax rate in Iredell county is a base of $0.45/$100.00 assessed value, with a fire assessment of $0.05/$100.00 assessed value. The expected rate in Mecklenburg County for 1998-9 will be approximately $0.665/$100.00, plus a law enforcement assessment of $0.095/$100.00. New construction growth in the "Meck Neck" area is approximately 2.14%.
2) **Other costs.** It is assumed that the costs associated with transferring documents, jury lists, etc. will be minimal. Because it is impossible to determine how many of the 12 school students will transfer to Iredell schools, no accurate estimate of the cost associated with the transfer is possible. Mecklenburg County pays a service contract of $215,000 for the area, which they will not pay if the bill is passed. The remaining costs associated with the Street Assessment are approximately $63,000.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY: Tom Covington

DATE: June 16, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1737*
Proposed Committee Substitute H1737-PCS9011-RB2

Short Title: NCSU Centennial Campus. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY INCLUDES THE COLLEGE OF VETERINARY MEDICINE, TO CLARIFY THAT THE BOARD OF GOVERNORS HAS THE AUTHORITY TO DESIGNATE THE REAL ESTATE AND APPURTENANT FACILITIES THAT COMPRISE THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY, TO MODIFY THE AUTHORITY OF THE BOARD OF GOVERNORS WITH REGARD TO CERTAIN TYPES OF DISPOSITIONS OF CENTENNIAL CAMPUS PROPERTY, TO EXEMPT CERTAIN REAL ESTATE TRANSACTIONS ON THE CENTENNIAL CAMPUS FROM PAYMENT OF THE STATE LAND SERVICE CHARGE, AND TO LIMIT THE NUMBER OF YEARS STATE PROPERTY CAN BE LEASED TO NINETY-NINE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-36.5 reads as rewritten:

"**§ 116-36.5. Centennial Campus trust fund.**

All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative

method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term 'Centennial Campus' ~~shall mean that real property and appurtenant facilities designated by the Board as part of the Centennial Campus of North Carolina State University at Raleigh.~~ is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section."

Section 2. G.S. 116-198.33(4) reads as rewritten:

"(4) The term 'Centennial Campus' ~~shall mean~~ means all of the following properties:

a. The real property and appurtenant facilities bounded by Blue Ridge Road, Hillsborough Street, Wade Avenue, and Interstate 440 that are the sites of the College of Veterinary Medicine, the University Club, and the Agricultural Turf Grass Management Program.

b. The real property and appurtenant facilities that are the former Dix Hospital properties and other contiguous parcels of property that are adjacent to Centennial Boulevard.

c. All other ~~that~~ real property and appurtenant facilities designated by the Board of Governors as part of the Centennial ~~Campus of the Institution.~~ Campus. The properties designated by the Board of Governors do not have to be contiguous with the Centennial Campus to be designated as part of that Campus."

Section 3. G.S. 116-198.34 reads as rewritten:

"**§ 116-198.34. General powers of Board of Governors.**

The Board ~~is authorized, subject to the requirements of this Article:~~ may exercise any one or more of the following powers:

(1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the management, lease, use, or operation of all or any portion of any project or projects and any existing ~~facilities;~~ facilities.

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the ~~same;~~ same.

(3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or ~~projects;~~ projects.

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing ~~facilities;~~ facilities.

(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities ~~for such period or periods of years, not exceeding 40 years,~~ upon such terms and conditions as the Board determines, subject to the provisions of ~~G.S. 143-341;~~ G.S. 143-341 and Chapter 146 of the General Statutes.

Notwithstanding G.S. 143-341 and Chapter 146 of the General Statutes, a disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus made for a period of 10 years or less shall not require the approval of the Governor and the Council of State. All other acquisitions and dispositions made under this subdivision are subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

(6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their ~~compensation;~~ compensation.

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this ~~Article;~~ Article.

(8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are ~~provided; and~~ provided.

(8a) To designate the real property and appurtenant facilities to be included as part of the Centennial Campus.

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article."

Section 4. G.S. 146-30 is amended by adding a new subsection to read:

"(b1) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands that are designated as part of the Centennial Campus as defined by G.S. 116-198.33(4). All net proceeds of those dispositions are governed by G.S. 116-36.5."

Section 5. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. -- Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of ~~State; provided that if the proposed disposition is a~~

~~sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.~~ State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. -- If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations."

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1737*
Proposed Committee Substitute H1737-PCS9011-RB2

Short Title: NCSU Centennial Campus. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY INCLUDES THE COLLEGE OF VETERINARY MEDICINE, TO CLARIFY THAT THE BOARD OF GOVERNORS HAS THE AUTHORITY TO DESIGNATE THE REAL ESTATE AND APPURTENANT FACILITIES THAT COMPRISE THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY, TO MODIFY THE AUTHORITY OF THE BOARD OF GOVERNORS WITH REGARD TO CERTAIN TYPES OF DISPOSITIONS OF CENTENNIAL CAMPUS PROPERTY, TO EXEMPT CERTAIN REAL ESTATE TRANSACTIONS ON THE CENTENNIAL CAMPUS FROM PAYMENT OF THE STATE LAND SERVICE CHARGE, AND TO LIMIT THE NUMBER OF YEARS STATE PROPERTY CAN BE LEASED TO NINETY-NINE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-36.5 reads as rewritten:

"**§ 116-36.5. Centennial Campus trust fund.**

All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative

method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term 'Centennial Campus' ~~shall mean that real property and appurtenant facilities designated by the Board as part of the Centennial Campus of North Carolina State University at Raleigh.~~ is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section."

Section 2. G.S. 116-198.33(4) reads as rewritten:

"(4) The term 'Centennial Campus' ~~shall mean~~ means all of the following properties:

a. The real property and appurtenant facilities bounded by Blue Ridge Road, Hillsborough Street, Wade Avenue, and Interstate 440 that are the sites of the College of Veterinary Medicine, the University Club, and the Agricultural Turf Grass Management Program.

b. The real property and appurtenant facilities that are the former Dix Hospital properties and other contiguous parcels of property that are adjacent to Centennial Boulevard.

c. All other ~~that~~ real property and appurtenant facilities designated by the Board of Governors as part of the Centennial ~~Campus of the Institution.~~ Campus. The properties designated by the Board of Governors do not have to be contiguous with the Centennial Campus to be designated as part of that Campus."

Section 3. G.S. 116-198.34 reads as rewritten:

"**§ 116-198.34. General powers of Board of Governors.**

The Board ~~is authorized, subject to the requirements of this Article:~~ may exercise any one or more of the following powers:

(1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the management, lease, use, or operation of all or any portion of any project or projects and any existing ~~facilities;~~ facilities.

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the ~~same;~~ same.

(3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or ~~projects;~~ projects.

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing ~~facilities;~~ facilities.

(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities ~~for such period or periods of years, not exceeding 40 years,~~ upon such terms and conditions as the Board determines, subject to the provisions of ~~G.S. 143-341;~~ G.S. 143-341 and Chapter 146 of the General Statutes.

Notwithstanding G.S. 143-341 and Chapter 146 of the General Statutes, a disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus made for a period of 10 years or less shall not require the approval of the Governor and the Council of State. All other acquisitions and dispositions made under this subdivision are subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

(6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their ~~compensation;~~ compensation.

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this ~~Article;~~ Article.

(8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are ~~provided; and~~ provided.

(8a) To designate the real property and appurtenant facilities to be included as part of the Centennial Campus.

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article."

Section 4. G.S. 146-30 is amended by adding a new subsection to read:

"(b1) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands that are designated as part of the Centennial Campus as defined by G.S. 116-198.33(4). All net proceeds of those dispositions are governed by G.S. 116-36.5."

Section 5. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. -- Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of ~~State; provided that if the proposed disposition is a~~

~~sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.~~ State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. -- If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations."

Section 6. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dicson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
H.B. 1737 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY INCLUDES THE COLLEGE OF VETERINARY MEDICINE, TO CLARIFY THAT THE BOARD OF GOVERNORS HAS THE AUTHORITY TO DESIGNATE THE REAL ESTATE AND APPURTENANT FACILITIES THAT COMPRISE THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY, TO MODIFY THE AUTHORITY OF THE BOARD OF GOVERNORS WITH REGARD TO CERTAIN TYPES OF DISPOSITIONS OF CENTENNIAL CAMPUS PROPERTY, AND TO EXEMPT CERTAIN REAL ESTATE TRANSACTIONS ON THE CENTENNIAL CAMPUS FROM PAYMENT OF THE STATE LAND SERVICE CHARGE.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1748
Proposed Committee Substitute H1748-CSLC-6/9
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Delay Revenue Interpretation. (Public)

Sponsors:

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE SECRETARY OF REVENUE NOT TO EXPAND HER INTERPRETATION OF THE TERM "DOING BUSINESS" UNDER THE CORPORATE INCOME TAX UNTIL THE 1999 GENERAL ASSEMBLY HAS HAD AN OPPORTUNITY TO ADDRESS THE ISSUE.

The General Assembly of North Carolina enacts:

Section 1. The Secretary of Revenue shall not expand her interpretation of the term "doing business" under G.S. 105-130.3 until after the Revenue Laws Study Committee has had an opportunity to study the issue and the 1999 General Assembly has had an opportunity to enact legislation on the issue.

Section 2. This act is effective when it becomes law and expires upon adjournment of the 1999 Regular Session of the 1999 General Assembly.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1748

Short Title: Exempt Corporations Without Presence. (Public)

Sponsors: Representatives Creech; and Buchanan.

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO PROMOTE FAIRNESS, STABILITY, AND PREDICTABILITY OF THE REVENUE LAWS BY PROVIDING THAT FOREIGN CORPORATIONS THAT DO NOT HAVE A SUBSTANTIAL PHYSICAL PRESENCE IN THIS STATE ARE NOT SUBJECT TO CORPORATE INCOME TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.1 reads as rewritten:

"**§ 105-130.1. Purpose.**

The general purpose of this Division is to impose a tax for the use of the State government upon the net income of every domestic corporation and of every foreign corporation doing business in this State. The intent of the legislature is to impose this tax only when such corporation has a substantial physical presence in this State.

The tax imposed upon the net income of corporations in this Division is in addition to all other taxes imposed under this Subchapter."

Section 2. G.S. 105-130.3 reads as rewritten:

"**§ 105-130.3. Corporations.**

(a) A tax is imposed on the State net income of every C Corporation doing business in this State. An S Corporation is not subject to the tax levied in this section. The tax is a percentage of the taxpayer's State net income computed as follows:

Income Years Beginning	Tax
In 1997	7.5%
In 1998	7.25%
In 1999	7%
After 1999	6.9%.

(b) A foreign corporation is not doing business in this State unless it has a substantial physical presence in this State."

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

EXPLANATION OF HOUSE BILL 1748:
Proposed Committee Substitute
Delay Revenue Interpretation

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 17, 1998
SPONSOR: Representative Creech

North Carolina's income tax applies to all C corporations *doing business in this State.* Corporations doing business in this State are those corporations that the State has the legal right to tax. Thus, the fundamental policy of the current law is to tax the income of all corporations over whom the State has jurisdiction.

House Bill 1748, as introduced, would provide an income tax exemption to a corporation that does not have a *substantial physical presence* in North Carolina, even if the corporation is otherwise doing business in the State. The bill as introduced is a significant departure from established policy and shifts the tax burden from taxable foreign corporations to corporations with offices in North Carolina. The **proposed committee substitute for House Bill 1748** directs the Secretary of Revenue not to expand the administrative construction of the term "doing business" until the Revenue Laws Study Committee has had an opportunity to study the issue and the 1999 General Assembly has had an opportunity to enact legislation on the issue.

The constitutional standard for doing business in a State is "minimal contact" and "substantial nexus". 17 NCAC 5C .0102 defines the term "doing business" as the "operation of any business enterprise or activity in North Carolina for economic gain." It then list different activities that are considered doing business. Under that rule, a corporation that does not have tangible personal property or employees located in this State is considered to be doing business in this State if it does any of the following:

- Renders a service to clients or customers in this State through in-State agents, such as non-employee independent contractors.
- Owns or rents income producing property in this State, such as trademarks, tradenames, franchise rights, computer programs, copyrights, patents, and licenses.
- Is a partner in a partnership or joint venture operating in this State.

House Bill 1748, as introduced, would invalidate this part of the Department's existing doing business rule, even though it meets the constitutional standards for doing business.

Earlier this year, the Department of Revenue attempted to modify its doing business rule to list factors the Department would consider in determining when an out-of-state credit card issuer is subject to this State's corporate income tax. The proposed amendment to the rule has not yet been considered by the Rules Review Commission. The proposed amendment provides that a financial institution that does not maintain a place of business in this State is doing business in this State, and thus subject to the State's corporate income tax, if it meets either of the following conditions:

- Makes or acquires more than $5,000,000 of loans secured by real property in this State.
- Has more than $5,000,000 of loans or other assets attributable to sources in this State and it has a substantial nexus with this State.

Whether a financial institution has substantial nexus in this State depends on the facts of each case. The proposed rule lists several factors to determine if nexus exists. The more factors that are present, the greater the likelihood that substantial nexus exists. The factors relate to maintaining an office or inventory, selling from a company vehicle, providing services through agents or employees, owning or using business property, and joining a venture operating in North Carolina. The affect of the bill as introduced would be to remove from North Carolina's tax base certain out-of-state financial institutions doing business in North Carolina.

It is a universal principle of taxation that taxes should be as low as possible and should apply uniformly and fairly to all taxpayers subject to tax. Including all taxable entities in the tax base assures the lowest possible tax rate. Corporations that do business only in North Carolina pay tax to North Carolina on 100% of their net income. If a corporation does business in several states, it pays tax on a portion of its income to each state in which it is doing business. Ideally, it would end up paying tax on 100% of its net income, just as the business operating solely in North Carolina does, but parts of the tax would be paid to different states. Under the bill as introduced, a corporation doing business in North Carolina without maintaining a place of business here would pay income tax on less than 100% of its net income because it would pay no state tax at all on its North Carolina income.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 1222*
Finance Committee Substitute Adopted 6/4/98

Short Title: Meck Neck. (Local)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE AREA OF MECKLENBURG COUNTY KNOWN AS MECK NECK TO IREDELL COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The boundary line between Iredell County and Mecklenburg County is hereby changed and relocated so as to divest Mecklenburg County of the territory described below, which territory shall vest in and become part of Iredell County:

That area commonly known as the Meck Neck, being all that land in Mecklenburg County which is connected by land to Iredell County and not connected by land to Mecklenburg County, and the area of Lake Norman in Mecklenburg County around such land, all as more particularly described as follows:

BEGINNING at Latitude 35° at 29.466" North and Longitude 80° at 56.597" West (the "present location of Fixed Lighted Marker D1" as established by the global positioning system, and being approximately .3 mile south of the southerly most point of the Meck Neck Land Area); thence in a northeasterly direction in a straight line which passes through Latitude 35° at 30.024" North and Longitude 80° at 55.736" West (the "present location of Fixed Lighted Marker D5" as established by the global positioning system) to a point in the Mecklenburg County-Iredell County line located near where the old channel of Reeds Creek intersects said line; thence in a westerly direction with the Mecklenburg County-Iredell County line to the point where said line intersects the Lincoln County line; thence in a southerly direction with the Mecklenburg County-Lincoln County line to a point where a straight line

from the present location of Fixed Lighted Marker D5 to the present location of Fixed Lighted Marker D1 extended would intersect with the Mecklenburg County-Lincoln County line; thence in a northeasterly direction with said straight line from the present location of Fixed Lighted Marker D5 to the present location of Fixed Lighted Marker D1 extended to the Mecklenburg County-Lincoln County Line to the present location of Fixed Lighted Marker D1, the point or place of BEGINNING.

Section 2. (a) On and after July 1, 1998, all papers, documents, and instruments required or permitted to be filed or registered, involving residents and property in the area described in Section 1 of this act, which previously would have been recorded in Mecklenburg County shall be recorded in Iredell County.

(b) All public records related to residents and property in the area described in Section 1 of this act which were filed or recorded prior to July 1, 1998, in Mecklenburg County, shall remain in Mecklenburg County where filed or recorded, and such records shall be valid public records as to the property and persons involved even though they are recorded in Mecklenburg County, a county where the property is no longer located.

(c) On and after July 1, 1998, all real and personal property in the area described in Section 1 of this act which was subject to ad valorem taxation in that area on January 1, 1998, shall be subject to ad valorem taxes in Iredell County for the fiscal year beginning July 1, 1998, to the same extent as it would have been had it been located in Iredell County on January 1, 1998, except as hereinafter provided with respect to classified registered motor vehicles. On July 1, 1998, the Mecklenburg County Tax Administrator shall transfer to the Iredell County Tax Assessor the ad valorem tax listings and valuations for all real and personal property subject to ad valorem taxation in the area described in Section 1 except classified motor vehicles which were registered in Mecklenburg County prior to July 1, 1998.

For the fiscal year which begins July 1, 1998, all real and personal property in the area described in Section 1 of this act which was subject to ad valorem taxation in that area on January 1, 1998, shall be assessed and taxed as follows:

(1) The ad valorem property taxes assessed on all classified registered motor vehicles registered or listed between January 1, 1998, and June 30, 1998, shall be collected by the Mecklenburg County Tax Collector and all such taxes shall be retained by Mecklenburg County. The taxes on all classified registered motor vehicles registered after June 30, 1998, shall be assessed and collected by the Iredell County Tax Department.

(2) The values established by the Mecklenburg County Tax Administrator on all personal property other than classified registered motor vehicles shall be used by the Iredell County Tax Assessor without adjustment in computing taxes due for the fiscal year beginning July 1, 1998. All such taxes shall be assessed and collected by the Iredell County Tax Department.

(3) The values established by the Mecklenburg County Tax Administrator on all real property shall be reduced by the Iredell County Tax Assessor by applying the difference between one hundred percent (100%) of such values and the Iredell median ratio, as established by the Sales Assessment Ratio Study compiled by the North Carolina Department of Revenue as of January 1, 1998. The taxes determined by applying this method will be collected and retained by the Iredell County Tax Collector.

(4) Beginning January 1, 1999, all property in the area described in Section 1 which is subject to ad valorem taxation shall be listed, assessed, and taxed by Iredell County in the same manner as is prescribed by law for all other property located in Iredell County.

(5) The final tax values of property subject to ad valorem taxation in the area described in Section 1 as of January 1, 1998, shall be determined by the Mecklenburg County Tax Administrator or the Mecklenburg County Board of Equalization and Review. Appeals to the North Carolina Property Tax Commission or to the courts shall be defended by Mecklenburg County, and Iredell County shall reimburse Mecklenburg County for all costs and expenses, including attorneys' fees, incurred in connection with such appeals.

(6) Any unpaid taxes or tax liens for the fiscal year ending June 30, 1998, or for prior years on property subject to taxation in the area described in Section 1 of this act shall continue to be valid and enforceable by Mecklenburg County, including the foreclosure remedies provided for in G.S. 105-374 and G.S. 105-375, and the remedies of attachment and garnishment provided for in G.S. 105-366 through G.S. 105-368. Mecklenburg County shall supply Iredell County with a list of unpaid taxes as of July 1, 1998. Any such taxes collected by Iredell County shall be promptly paid to Mecklenburg County including accrued interest.

(d) On July 1, 1998, Iredell County shall become fully responsible for completing the Street Assessment Program begun by Mecklenburg County pursuant to authority granted to counties by Article 9 of Chapter 153A of the General Statutes to improve Blarney Road and Gainswood Drive to meet the State's requirements for adding such roads to the State Secondary Road System, said roads being located within the area described in Section 1 of this act. To the extent not already completed by July 1, 1998, Iredell County shall become responsible for preparing the Preliminary Assessment Roll, conducting the hearing on the Preliminary Assessment Roll Resolution, adopting the Final Assessment Roll Resolution, publishing the Notice of Confirmation of the Assessment Roll, and collecting the unpaid assessments. Should Mecklenburg County have paid the Department of Transportation for the improvement work performed on said roads before the date that the area described in Section 1 of this act is transferred to Iredell County, Iredell County will reimburse Mecklenburg County for said cost, to the extent not

reimbursed by the property owners, within 90 days of said transfer of the area described in Section 1 of this act to Iredell County.

(e) No cause of action, including criminal actions, involving persons or property in that area described in Section 1 of this act which is pending on July 1, 1998, shall be abated, and such actions shall continue in Mecklenburg County.

(f) The Board of Elections of Mecklenburg County shall immediately after July 1, 1998, transfer the voter registration records pertaining to persons residing in the area described in Section 1 of this act to the Iredell County Board of Elections, and thereafter the registered voters so transferred shall be validly registered to vote in Iredell County.

(g) The Jury Commission of each county shall revise its jury lists to add to or eliminate therefrom those persons subject to jury duty who reside in the area described in Section 1 of this act, said revised jury lists to be effective July 1, 1998.

(h) The area described in Section 1 of this act shall be transferred into Superior Court District 22, District Court District 22, and Prosecutorial District 22. The area described in Section 1 of this act shall remain in the same Congressional District, the same State House of Representatives District, and the same State Senate District.

Section 3. The Meck Neck Transfer Joint Undertaking Agreement made as of November 18, 1997, by and between Iredell County and Mecklenburg County is ratified.

Section 4. Iredell County shall pay, on behalf of residents of the Meck Neck, all tuition charges which might have been imposed by the Iredell County Board of Education on children living in the Meck Neck who attended schools operated by the Iredell County Board of Education prior to July 1, 1998.

Section 5. Any child who was a resident of the area annexed by Section 1 of this act on its date of ratification and who was a student in the Charlotte-Mecklenburg school system during the 1997-98 school year, and the siblings of any such person, may attend school in the Charlotte-Mecklenburg school system without necessity of a release or payment of tuition. Such student, while attending the Charlotte-Mecklenburg school system, shall be considered a resident of Mecklenburg County for all public school purposes, including transportation, athletics, and funding formulas. Notice must be given to both school systems by the parent or guardian in order to exercise the privilege granted by this section.

Section 6. This act becomes effective July 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1222 (Proposed Committee Substitute)

SHORT TITLE: Meck Neck

SPONSOR(S): Finance Committee

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03

REVENUES

No expected General Fund impact
Will redistribute approximately $660,000 - $760,000 in revenues and expenditures between Mecklenburg and Iredell Counties

EXPENDITURES

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Mecklenburg County, Charlotte-Mecklenburg Schools, Iredell County, Statesville-Iredell Schools, Department of Public Instruction.

EFFECTIVE DATE: July 1, 1998

BILL SUMMARY: The bill will change the territory of Mecklenburg and Iredell Counties by incorporating into Iredell County the "Meck Neck" area (area of Mecklenburg County connected by land to Iredell County but not connected by land to Mecklenburg County) and certain portions of Lake Norman. The bill includes provisions dealing with the transfer of public school students, jury lists, and voting regulations. It mandates that all public records for the area filed after July 1, 1998 must be filed in Iredell County. All real and personal property in the Meck Neck area, that was subject to ad valorem tax on January 1, 1998, will be subject to taxes in Iredell County for the fiscal year beginning July 1, 1998, with some being subject to an adjustment factor. Mecklenburg County will retain property taxes on motor vehicles registered or listed between January 1 and June 30, 1998. The bill also transfers responsibility for a street assessment program in the area to Iredell, and clarifies that pending legal causes of action will continue in Mecklenburg County. Court jurisdictions will also be transferred.

ASSUMPTIONS AND METHODOLOGY: While the PCS changes the bill it does not change the general fund impact. Because there are only 12 public school students in the Meck Neck area, and all have the option of staying in Mecklenburg, it is assumed that there will be no significant cost to the state associated with student transfers. This is the only item in the bill that could have an impact on the General Fund.

The county impact assumes the following:

1) **Property taxes and valuation.** According to the Mecklenburg County Manager, the total value of property in the "Meck Neck" area is approximately $88 million. The current property tax rate in Iredell county is a base of $0.45/$100.00 assessed value, with a fire assessment of $0.05/$100.00 assessed value. The expected rate in Mecklenburg County for 1998-9 will be approximately $0.665/$100.00, plus a law enforcement assessment of $0.095/$100.00. New construction growth in the "Meck Neck" area is approximately 2.14%.
2) **Other costs.** It is assumed that the costs associated with transferring documents, jury lists, etc. will be minimal. Because it is impossible to determine how many of the 12 school students will transfer to Iredell schools, no accurate estimate of the cost associated with the transfer is possible. Mecklenburg County pays a service contract of $215,000 for the area, which they will not pay if the bill is passed. The remaining costs associated with the Street Assessment are approximately $63,000.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY: Tom Covington

DATE: June 16, 1998

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1222 A BILL TO BE ENTITLED AN ACT TO TRANSFER THE AREA OF MECKLENBURG COUNTY KNOWN AS MECK NECK TO IREDELL COUNTY.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

Name of Committee: House Finance

Date: June 17, '98

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Larry Monteith	NC State
Jim Braithwaite	NC State
GEORGE WORSLEY	NC STATE
Charles Moreland	NC State
JERRY COCHRANE	GASTON COLLEGE
PAT Skinner	Gaston College - Dallas, NC
T. Gray	Business NC magazine
Bob Daniel	DOR
Lennie Collins	DOR
[illegible]	OSBM
[illegible]	DOR
[illegible]	DOR

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Danny Rogers	NCDOT
Sandy Sands	WCSR
Dick Calder	
Eric Musser	Price Waterhouse LLP
Meredith Norris	
Larry Heckner	Household Financial Group
VLM Bridges	NCDA
Bill Scoggin	NC Bar Assoc.
Patrice Roesler	NCACC
Mary Carriker	Mecklenburg County
Margaret Carpenter	Visitor
John McMillan	Manning, Fulton & Skinner

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bernard Allen	SOS
Mary Mountcastle	Poyner + Spruill
Stacey Slaughter	Legislative Intern
Ellen Allen	NCMS
Roger Bone	Bone + Assoc
Bill Gates	Seattle, Wash.
Natalie Watkins	Charlotte Chamber
Lisa Glover	IOG law clerk
[illegible]	IOG law clerk
Y. Walker	IOG Law Clerk
Frayda Bluestein	Institute of Govt.
Gregory S. Allison	Institute of Govt.

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

June 17th, 1998
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Dave Simmons	ADA, PA
Alice Garland	Electricities
Carl Godwin	OSP
DK Beam	the Capitol Group

MINUTES

JOINT MEETING WITH SENATE

COMMITTEE ON FINANCE

TUESDAY, JUNE 16, 1998

3:00 P.M. ROOM 643-LOB

The House and Senate Committee on Finance and Appropriations met on Wednesday afternoon, June 16, 1998 at 3:00 p.m. in Room 643-LOB. A silent roll was taken for membership, (roll list denotes members present).

Rep. L. Gray and Sen. D. Hoyle co-chaired the joint meeting. Rep. Gray called the meeting to order and welcomed members and guests.

HB-1688 ECONOMIC OPPORTUNITY ACT OF 1998
SB-1569 ECONOMIC OPPORTUNITY ACT OF 1988

Mr. Rick Carlisle, Secretary of Commerce presented a slide presentation (copy attached). Ms. Martha Harris, Bill Drafting Division, gave the explanation. Sen. L. Shaw asked a series of questions regarding tiering of counties. Ms. Harris and Sec. Carlisle responded. Sen. Ballentine questioned development zones requirements and Sec. Carlisle answered his inquiry. Mr. David Crotts, Fiscal Research Division, presented the fiscal note explanation. Rep. Luebke asked about jet fuel and Mr. Crotts advised it had been eliminated from the bill. Sen. Kerr commented on the bill. Sen. Hoyle questioned the economic return figures for NuCor and FedEx. Sec. Carlisle responded. Sen. B. Shaw inquired about the benefits of NuCor employees and questioned hiring of people from across the Virginia line. Sec. Carlisle again responded. Rep. Redwine questioned Page 20 regarding tax dollars for infrastructure and investments. Again, Sec. Carlisle provided an answer. Sen. Hoyle followed up on the remarks of Sen. Shaw regarding the hiring of North Carolina citizens. Ms. Harris made additional remarks. Sen. L. Shaw commended the Department of Correction for their work on this issue. Sen. B. Shaw remarked on who will be investing the money in Greensboro. Sec. Carlisle responded to his comments. Sen. Hoyle addressed Sen. L. Shaw's questions/comments. Sen. Blust shared questions of concern regarding the property tax exclusion and the fact that tax exclusions could not continue over a period of years. He feels we should take a broad look at the tax problems of the future. Sen. Hoyle agreed with some of his comments and made additional remarks regarding what will be best for our state. Rep. Cunningham questioned Rep. H. Hunter in regards to the number of North

Carolinians that drive to Virginia each day from his district. Rep. Hunter responded. Sen. McDaniel, and Sen. Kerr spoke. Rep. Owens spoke in favor of the bill and the importance of economic development for North Carolina. Rep. Berry had a series of questions for Sec. Carlisle and he responded. Rep. Hunter questioned the Board of Economic Development for state enterprise zones. Sec. Carlisle spoke on the Board endorsements. Sen. B. Shaw shared additional concerns. Sen. Ballance spoke in favor of this being an opportunity for our citizens. Rep. Womble questioned the credits portions of the bill. Mr. David Crotts replied. He also asked for data regarding employment and Chairman Gray advised that DOC could provide this information for him. Rep. Luebke asked how to review low income family studies in tier counties. Sec. Carlisle explained. Sen. Phillips spoke on economic development in his District and he supports this legislation because his county will prosper in the long range plan from this. Sen. Allran followed up on comments made in earlier discussion. He would like to know the unemployment rates for his District, what effects this will have on traffic and will the jobs created in Guilford County be low or high paying jobs to attract people from other states. Sec. Carlisle replied that the Employment Security Commission maintains data on unemployment. He further addressed comments regarding unemployment and that the jobs are being provided for our North Carolina citizens. Rep. Jarrell questioned the fiscal impact for Guilford County and Mr. Crotts responded. Sen. Hoyle spoke again in favor of the bill and announced that the Senate Finance Committee would continue discussion on this issue at their noon meeting on Thursday, June 17, 1998.

The meeting adjourned at 5:30 p.m.

Rep. L. Gray, Co-chairman

Sen. D. Hoyle, Co-chairman

Cindy Brooks, Committee Clerk

Penny Williams, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1569*
Proposed Committee Substitute S1569-PCS6844-LC

Short Title: Economic Opportunity Act of 1998. (Public)

Sponsors:

Referred to:

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO FURTHER PROMOTE DEVELOPMENT IN ALL AREAS OF THE STATE BY MODIFYING THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT, CREATING STATE DEVELOPMENT ZONES, PROVIDING FUNDS FOR INFRASTRUCTURE IN RURAL AND LESS PROSPEROUS AREAS, ENCOURAGING DEVELOPMENT OF AIR COURIER HUBS, AND ENCOURAGING DEVELOPMENT OF THE RECYCLING INDUSTRY IN TIER ONE COUNTIES.

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS

I. BILL LEE ACT/DEVELOPMENT ZONES
II. INFRASTRUCTURE FUNDS
III. AIR COURIER HUBS
IV. RECYCLING INDUSTRY
V. EFFECTIVE DATES

PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

The following definitions apply in this Article:

(1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~ A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(2) Data processing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(2a) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(4a) Reserved.

(4b) Large investment. -- Defined in G.S. 105-129.4(b1).

(5) Machinery and equipment. -- Engines, machinery, tools, and implements ~~that are capitalized by the taxpayer for tax purposes under the Code and are~~ used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued~~ North American Industry Classification System adopted by the United States Office of Management and Budget.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and ~~distribution. -- Defined in the Standard Industrial Classification Manual issued~~ wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

"**§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

"**§ 105-129.3A. Development zone designation.**

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts and census block groups in the most recent federal decennial census that meets all of the following conditions:

(1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) ~~Manufacturing or processing.~~ Manufacturing.
(5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs ~~if, during the taxable year the taxpayer first uses the property as a central administrative office,~~ if the taxpayer hires at least 40 additional full-time employees to fill new positions at the ~~office.~~ office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are

available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and~~

~~stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the

sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the~~ a credit with respect to a large investment may be carried forward for the succeeding ~~five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.
(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
(3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving

eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located.~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development

zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-

Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section ~~41~~ 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for~~ the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the

most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. ~~Economic~~ Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants ~~for economic development that will ensure that no~~ to ensure that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. ~~105-129.3 and, to~~ 105-129.3.

(2) To the extent practicable, ~~that~~ priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. ~~105-129.3.~~ 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing,~~ eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing,~~ eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations.~~ eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use

up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of ~~four thousand dollars ($4,000)~~ five thousand dollars ($5,000) per new job created up to a maximum of ~~four hundred thousand dollars ($400,000)~~ five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(a1) Definitions. -- The following definitions apply in this section:

(1) Air courier services. -- A person is engaged in the air courier services business if the person is primarily engaged in furnishing air delivery of individually addressed letters, parcels, and packages, except by the United States Postal Service.

(1a) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1b) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(1c) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(1d) Eligible industry. -- A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.

(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(3) ~~Manufacturing and processing.~~ Manufacturing. -- Defined in the ~~Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ North American Industry Classification System adopted by the United States Office of Budget and Management.

(4) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in ~~manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.~~ eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(6a) Interstate air courier. -- A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.

(6b) Hub. -- The airport in this State (i) to which an air courier has allocated under G.S. 105-388 more than fifty percent (50%) of its aircraft value apportioned to this State and (ii) at which the air

courier receives packages from consolidation locations for intrastate and interstate sorting and distribution."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new subdivision to read:

"j. Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Sales of the following items to an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

"(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms 'interstate air courier' and 'hub' have the meanings provided in G.S. 105-164.3."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. RECYCLING INDUSTRY

Section 12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Tax Incentives for Recycling Facilities.

"**§ 105-129.25. Definitions.**

The following definitions apply in this Article:

(1) Reserved.

(2) Reserved.

(3) Large recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(b).

(4) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(5) Major recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(a).

(6) Owner. -- A person who owns or leases a recycling facility.

(7) Post-consumer waste material. -- Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling facility either directly or indirectly, such as through a broker or an agent.

(8) Purchase. -- Defined in section 179 of the Code.

(9) Recycling facility. -- A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land surrounding the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.

"§ 105-129.26. Qualification; forfeiture.

(a) Major Recycling Facility. -- A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(b) Large Recycling Facility. -- A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.

(2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars ($150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.

(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(c) Forfeiture. -- If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. -- To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Reports. -- The Department of Commerce shall report to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number and location of large and major recycling facilities qualified under this Article.

(2) The number of new jobs created by each recycling facility.

(3) The amount of investment in each recycling facility.

(4) The amount of reinvestment credit refunded to each major recycling facility under G.S. 105-129.28.

"§ 105-129.27. Credit for investing in large or major recycling facility.

(a) Credit. -- An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. -- The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of

Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. -- The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. -- The sale, merger, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. -- If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. -- A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

"§ 105-129.28. Credit for reinvestment.

(a) Credit. -- A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. -- The credit allowed to a major recycling facility under this section for the taxable year may not exceed the applicable annual cap provided in the following table:

Taxable Year	Cap
1998	$ 150,000
1999	$ 640,000
2000	$ 3,860,000
2001	$ 8,050,000

2002	$ 9,550,000
2003	$10,100,000
2004-2007	$10,400,000

(c) Reduction. -- For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed by this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. -- For the first ten taxable years after the owner begins construction of the major recycling facility, the owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

Expenses incurred for the purposes allowed in this subsection during a taxable year in the ten-year period may be counted toward a credit allowed in a later taxable year in the ten-year period. If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and the credit allowed the owner under this section for the following taxable year shall be reduced by that amount in accordance with subsection (c) of this section.

After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b) and adding a new subdivision to read:

"(8) Major recycling facility. -- Defined in G.S. 105-129.25."

Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new sub-subdivision to read:

"j. Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment."

Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to read:

"(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility."

Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

"(g) Major Recycling Facilities. -- The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred."

Section 17. G.S. 105-164.14(f) reads as rewritten:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this

subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund."

Section 18. G.S. 105-275(8)b. reads as rewritten:

"b. Real or personal property that is used or, if under construction, is to be used ~~exclusively~~ predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as ~~its primary~~ a purpose recycling or resource recovering of or from solid waste."

Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed effective for taxable years beginning on or after January 1, 2008. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S. 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its repeal.

The sole purpose of this ten-year sunset provision is to allow a determination to be made whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships to transport materials and products to and from the facility. It is the expectation and intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is determined that, based on audited documentation submitted by a major recycling facility and verified by the Secretary of Commerce, that any major recycling facility continues to experience these additional transportation and transloading expenses as of 2008.

PART V. EFFECTIVE DATES

Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 21. Part II of this act becomes effective July 1, 1998.

Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of

this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 23. Section 12 of this act is effective for taxable years beginning on or after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998, and apply to sales made on or after that date. Section 18 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV of this act is effective when it becomes law.

FISCAL IMPACT OF PCS FO[illegible]1569 (HB 1688)
ECONOMIC OPPORTUNITY ACT OF 1998
STATE GENERAL FUND ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Extend targeted investment tax credit to certain operating lease	TY 99	-	-	-1.80	-2.48	-2.96	-2.96	-2.96
Levies $75 application fee for Lee Act Credits	TY 99	0.06	0.07	0.07	0.08	0.09	0.09	0.10
Provides additional tax incentives for establishments located in state development zones	TY 99	-	-	-0.42	-1.27	-2.54	-4.01	-4.01
Lowers sales tax on equipment for handling and storing materials sold to interstate air couriers from 4% to 1%, $80 limit	1/1/01	-	-	-	-0.36	-0.36	-0.08	-0.08
Provides sales tax exemption for sales of lubricants, repair parts, and accessories for aircraft assigned to air courier hub	1/1/01	-	-	-	-	-	-0.16	-0.16
Provides refundable corporate income tax credit for "major" recycling facilities equal to additional transport expenses	TY 98	-0.15	-0.64	-3.86	-8.05	-9.55	-10.10	-10.40
Lower state 4% sales tax to 1%, $80 limit for cranes, foundations, transportation equipment, and materials handling equipment at major recycling facility. Exempts from state sales tax lubricants and other additives for vehicles and machinery used at plant, and other materials and supplies used or consumed in manufacturing process.	9/1/98	-0.27	-0.11	-0.17	-0.19	-0.19	-0.21	-0.22

TY = Tax Year

FISCAL IMPACT OF PCS FOR SB 1569 (HB 1688)
ECONOMIC OPPORTUNITY ACT OF 1998
STATE GENERAL FUND ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Exempts from 2.83% state sales tax electricity used at major recycling facility.	9/1/98	-	-	-0.03	-0.07	-0.09	-0.11	-0.12
Provides annual sales tax refund for building materials, supplies, fixtures, and equipment that become part of major recycling facility	9/1/98	-1.33	-	-	-	-	-	-
Expands targeted investment tax credit for investment in machinery and equipment at major recycling facility	TY 98	-0.53	-0.53	-0.60	-0.60	-0.73	-1.05	-2.43
TOTAL - STATE GENERAL FUND		**-2.22**	**-1.21**	**-6.81**	**-12.97**	**-16.33**	**-18.59**	**-20.28**

TY = Tax Year

FISCAL IMPACT OF PO[illegible]R SB 1569
ECONOMIC OPPORTUNITY ACT OF 1998
LOCAL GOVERNMENT REVENUE ($ MILLION)

Item	Eff. Date	98-99	99-00	00-01	01-02	02-03	03-04	04-05
Lowers state sales tax on sales handling and storing materials sold to interstate air couriers from 4% to 1%, $80 limit	1/1/01	-	-	-	-0.24	-0.24	-	-
Provides state sales tax exemption for sales of lubricants, repair parts, and accessories for aircraft assigned to air courier hub	1/1/01	-	-	-	-	-	-	-
Allows property tax exemption for aircraft owned by air courier and apportioned for property tax purposes to courier's hub in the state	TY 01	-	-	-	-0.35	-0.37	-0.39	-0.41
Exempts from local sales tax cranes, foundations, transportation equipment, materials and supplies, lubricants and other additives for vehicles and other machinery used at major recycling facility and other materials and supplies used or consumed in manufacturing process at major recycling facility	9/1/98	-0.13	-0.05	-0.09	-0.09	-0.09	-0.11	-0.11
Provides annual sales tax refund for building materials, supplie fixtures, and equipment that become part of major recycling facility	9/1/98	-0.67	-	-	-	-	-	-

TY = Tax Year

NOTE: These estimates are preliminary, based on adjustment of cost estimates supplied by Department of Commerce. Some of the losses are associated with economic activity that has not taken place and has not been built into economic assumptions that are part of State General Fund revenue forecast.

FRD, 6/16/98

EXPLANATION OF SENATE BILL 1569[1]:
Proposed Committee Substitute (June 16)
Economic Opportunity Act of 1998

TO: House and Senate Finance Committees
FROM: Martha H. Harris, Staff Attorney
DATE: June 16, 1998
SPONSOR: Senator Hoyle

This bill is designed to promote economic development throughout the State in five ways[2]:

1. It makes various amendments to the William S. Lee Act to encourage large investments and remove technical problems with the Act.
2. It authorizes enhanced incentives for development zones, which are economically distressed areas located within municipalities.
3. It expands and modifies the Industrial Development Fund to provide financial support for projects in rural and less prosperous areas of the State.
4. To encourage development of air courier hubs, it provides sales tax and property tax reductions for air couriers and provides a temporary bidding law exemption for specific projects of the Piedmont Triad International Airport Authority.
5. To encourage development of the recycling industry in Tier One counties, it provides an investment tax credit for large and major recycling facilities that locate in Tier One counties and, in addition, it provides a refundable reinvestment credit and sales tax reductions for major recycling facilities.

William S. Lee Act Modifications. Part I of the bill makes a number of changes to the William S. Lee Quality Jobs and Business Expansion Act, some technical and some substantive. Unless a different date is given, these changes all become effective beginning with the 1999 tax year.

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[1] The House companion to this bill is House Bill 1688, introduced by Representative Gray.

[2] The proposed committee substitute differs from the original bill in four ways. First, it authorizes local governments to use up to 2% of a grant from the Industrial Development Fund to administer the grant and to verify that the funds are used for the required purposes. Second, it specifies that under the Bill Lee Act, the wage standard for a development zone is the same as in a Tier One County. Third, it narrows the sales tax reductions for air carriers to apply only to air courier hubs. Fourth, it adds Part IV of the bill to encourage development of the recycling industry in Tier One counties.

Part I makes two changes to the central administrative office credit that was enacted last year. First, it allows the credit to be taken against the insurance gross premiums tax. This change will permit insurance companies to qualify for the credit. Second, it clarifies that a central administrative office meets the requirement for creating new jobs if the jobs begin before the office property is in service but are located at a temporary facility that the business occupies while waiting for its office property to be completed.

Part I also makes two changes to the credit for investing in machinery and equipment. First, it provides that for projects that span two tax years, the threshold applies only once to the investment. Otherwise, a project put in service from May through September would receive more benefit than a project put in service from November through March. This change goes into effect beginning with the 1998 tax year. Second, it expands the credit to include machinery and equipment the taxpayer uses under an operating lease, but only if the machinery and equipment are part of a project valued at $150 million or more. Otherwise, the current law allows the credit only for machinery and equipment the taxpayer acquires under a capital lease or purchases and capitalizes.

Part I expands the credit for research and development. The existing credit for research and development piggybacks the federal credit, allowing a State credit equal to approximately ¼ of the federal credit as it relates to North Carolina activities. In 1997, Congress enacted an alternative credit for research and development. The bill modifies the State credit to also allow a credit equal to approximately ¼ of the federal alternative credit as it relates to North Carolina activities.

Part I simplifies the credit for worker training. In order to qualify under current law for the credit for worker training, the taxpayer must get its planned training certified in advance by the Department of Community Colleges. This requirement has been difficult both for taxpayers and for the Department of Community Colleges. The bill replaces the current credit measured by costs of training with a credit for wages paid to workers while they are being trained (not including on-the-job training). The credit is restricted to employees for whom the taxpayer qualifies for the jobs tax credit and employees being trained to operate machinery and equipment for which the taxpayer qualifies for the credit for investing in machinery and equipment.

Finally, Part I makes a number of administrative and technical changes to the William S. Lee Act. First, it levies a $75.00 application fee on taxpayers who seek to qualify for a credit. The proceeds of the fee will help the Department of Commerce defray its costs in administering the credits. Most states with similar incentives laws require a fee, and their fees tend to be much higher. The application fee would become effective January 1, 1999. Second, the bill extends

the credit carryforward period for investments over $150 million. Currently, the credit may not reduce the taxpayer's tax liability by more than half, and any excess may be carried forward for up to five years. The bill provides that for large investments, the excess may be carried forward for up to 20 years. Third, the bill clarifies that credits are allowed only for new and expanding businesses, not for existing businesses that are sold to another taxpayer. The bill provides an exception, however, for a business that has closed, has filed a federally required notice that closure is imminent, or has been purchased in an employee buyout. In these cases, the business will be able to qualify for the credits to the same extent as a new business. Fourth, the bill clarifies the definitions of the different types of businesses that are eligible for credits[3] and clarifies the method of calculating the investment tax credit and the business tax credit for property acquired by a capital lease.

State Development Zones. Part I of the bill provides for the designation of economically distressed areas located within municipalities as State development zones, and authorizes enhanced incentives for businesses that locate in a development zone. This change becomes effective beginning with the 1999 tax year. The bill defines a development zone as an area (1) consisting of one or more contiguous census tracts and block groups, (2) with a population of 1,000 or more, at least 20% of whom are below the poverty level, and (3) located at least partly in a municipality with a population over 5,000. If a business locates in a development zone, the wage standard it has to meet is the same as for Tier One counties - slightly lower than the standard for other counties. In addition, if a business locates in a development zone, its maximum worker training credit is $1,000 rather than $500, it receives an additional $4,000 per job on its jobs tax credit, and there is no threshold for the credit for investing in machinery and equipment.

The Secretary of Commerce will designate development zones upon request of a taxpayer or a local government. The designation is effective for four

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[3] The bill changes statutory references from the Standard Industrial Classifications (SIC) to the North American Industrial Classification System (NAICS) to conform to the federal system. These references are used in the William S. Lee act to define various types of businesses. The bill also changes the term "manufacturing and processing" to "manufacturing" and the term "warehousing and distribution" to "warehousing and wholesale trade" to conform to the NAICS. In April 1997, the United States Office of Management and Budget announced the adoption of a new industry classification replacing the SIC, a system used to classify most of the data we have about industries or kinds of business in our economy. The updating of industry classifications is nothing new. Since its origination in the 1930s, the SIC system has been revised or updated every 10 or 15 years to reflect new developments in the American economy and to address problems identified by data users and statistical agencies. It was last revised in 1987.

years. The bill provides that a development zone may qualify for priority in receiving community development block grants if the municipality's governing body adopts a strategy to improve the zone and establishes a committee to implement the strategy, in accordance with guidelines established by the Department of Commerce.

Infrastructure Funds. Part II of the bill states the intent of the General Assembly to appropriate funds to the Industrial Development Fund and the Utility Account of the Industrial Development Fund. The Governor's budget requested an appropriation of $32 million, $18 million for the Fund and $14 million for the Utility Account. Under current law, money in the Utility Account can be used in Tier One counties for construction or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or for existing, new, or proposed industrial buildings to be used in manufacturing and processing, warehousing and distribution, or data processing. The bill would expand the scope of the Utility Account to include Tier Two counties.

Under current law, the Industrial Development Fund provides funding for manufacturing projects in Tier One, Two, and Three counties as well as in areas experiencing major economic dislocations. The funds may be used for equipment, capital improvements, and utility distribution lines. Projects in Tier Two and Three Counties are required to match the State funds on a $1/$3 basis. The funding is capped at $4,000 per job to be created and $400,000 per project. The bill would raise the per-job cap to $5,000 and the per-project cap to $500,000. The bill would also expand the industries covered by both the Industrial Development Fund and the Utility Account to include all of the following: manufacturing, central administrative offices, air courier services, data processing, and warehousing and wholesale trade.

Under current law, funds in the Industrial Development Fund and the Utility Account are used for grants to local governments and, in some cases, loans to businesses through the local government and a bank that matches the loan. The bill would clarify that a local government that receives funds, may, if necessary, use up to 2% of the funds to verify that the funds are used as required by law and otherwise to administer the grant or loan.

Air Courier Hubs. Part III of the bill provides sales tax and property tax reductions for interstate air couriers in order to encourage the development of air courier hubs in North Carolina. An air courier is an air carrier that delivers individually addressed letters, parcels, and packages. Effective January 1, 2001, the bill provides that sales to an interstate air courier of equipment for handling and storing materials at its hub will be subject to a reduced sales tax of 1%, capped at $80 per item. In addition, the bill provides a sales tax exemption for

sales to interstate an air courier of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at the air courier's hub in this State. Effective beginning with the 2001 property tax year, the bill provides a property tax exemption for aircraft owned by an air courier and apportioned for property tax purposes to the courier's hub in this State. A hub is the place in this State where the air courier allocates for property tax purposes more than 50% of its North Carolina aircraft value and where it receives packages from consolidation locations for sorting and distribution.

Part III also grants a bidding law exemption for the Piedmont Triad International Airport Authority. The exemption is effective for a five-year period beginning January 1, 1999, and applies to design and construction of an air freight distribution facility on airport property, and related supplies, equipment, and services.

Recycling Facilities. Part IV of the bill provides tax incentives for "large" and "major" recycling facilities located in Tier One counties at the time of initial construction. A recycling facility is a plant that manufactures products, most of which are made from at least 50% post-consumer waste material. The facility also includes related infrastructure, buildings, and equipment on land surrounding the plant. A large recycling facility is one that will involve at least $150 million in new investment and 155 new jobs within a two-year period. A major recycling facility is one that will involve at least $300 million in new investment and 250 new jobs within a four-year period. In order to qualify for the applicable tax incentives, the owner of the facility must obtain certification from the Department of Commerce that it will meet the minimum investment and new job requirements. If the facility fails to meet either requirement within the applicable time period, it forfeits any tax benefit it received as a result of being certified.

Part IV provides an investment tax credit for both large and major recycling facilities, effective beginning with the 1998 tax year. This investment tax credit is in lieu of the investment tax credit provided in the William S. Lee Act. The recycling facility investment tax credit differs from the Bill Lee Act credit in the following ways:

1. The Bill Lee Act credit is equal to 7% of the cost of machinery and equipment, while the large recycling facility credit is equal to 20% of the cost and the major recycling facility credit is equal to 50% of the cost.
2. The credit is allowed at the time the owner of the recycling facility accrues expenses to purchase or lease the machinery and equipment, rather than at the time the machinery and equipment are placed in service, as under the Bill Lee Act. If the recycling facility fails to put

the machinery and equipment in service within 30 months after taking the credit, the credit is forfeited and must be repaid.

3. The credit is allowed against both the corporate franchise tax and the corporate income tax. Under the Bill Lee Act, the credit is allowed against either but not both of those taxes.
4. The credit may equal 100% of the tax due from the owner of the facility. Under the Bill Lee Act, the credit is limited to 50% of tax due, so that the taxpayer will be paying some tax in every case.
5. The excess credit may be carried forward for 25 years. Under the Bill Lee Act, as revised by this bill, the relevant carryforward period would be 20 years.

Part IV also provides to major recycling facilities locating in Tier One counties a refundable corporate income tax "credit for reinvestment," effective beginning with the 1998 tax year. The credit applies if the major recycling facility is not accessible by ocean barge or ship and incurs additional expenses due to transporting its materials and products by alternative modes of transportation. The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap is $640,000. In 2004, the cap levels off at $10.4 million a year. The bill sunsets this reinvestment credit effective with the 2008 tax year. The bill states the intent, however, to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

The reinvestment credit is refundable. That means that if the amount of credit exceeds the major recycling facility's tax liability after all other credits are subtracted, the balance is paid out in cash. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling facility. The facility must document its compliance with this reinvestment requirement and forfeits any part of the credit it spends for another purpose. It is this reinvestment requirement that gives the credit its name.

Part IV provides several sales and use tax reductions for major recycling facilities locating in Tier One counties, effective beginning July 1, 1998. First, it provides that a reduced sales tax rate of 1%, capped at $80 per item, will apply to cranes, foundations, transportation equipment, and materials handling equipment used at the major recycling facility. These items would otherwise be subject to 4% State sales tax and 2% local sales tax. Second, it exempts from sales tax lubricants and other additives for vehicles and machinery used at the plant, and other materials and supplies (not including machinery and equipment) that are used or consumed directly in the manufacturing process. These items would also otherwise be subject to a combined State and local rate of 6%. Third, it exempts from sales tax electricity purchased for use at the major recycling facility. This electricity would otherwise be subject to State sales tax at 3% or 2.83%. Fourth, Part IV provides an annual sales tax refund for taxes a major recycling facility pays directly or indirectly on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility located in a Tier One county.

Finally, Part IV modifies the existing property tax exemption for property used for recycling, effective beginning with the 1999-20 property tax year. Under current law, to qualify for exemption, the property must be used exclusively for recycling and have recycling as its primary purpose. The bill would provide instead that the property must be used predominantly for recycling and have recycling as a purpose. The Department of Environment and Natural Resources determined that these changes would be necessary to prevent a recycling facility from being disqualified because it adds fillers or other materials to the post-consumer waste material when manufacturing products.

ECONOMIC OPPORTUNITY ACT OF 1998

HB 1688/SB 1569

The Act

- Modifications to the William S. Lee Quality Jobs and Business Expansion Act
- Creation of State Development Zones
- Modifications to the Industrial Development Fund statutes
- Incentives for air courier hubs
- Incentives for Tier 1 recycling facilities

William S. Lee Quality Jobs and Business Expansion Act Modifications

William S. Lee Act Modifications

- Central Administrative Office Tax Credit
  - Revise tax credit to allow companies operating in temporary space while permanent office space is being constructed to be eligible for the credit
  - Extend the application of tax credits to gross premiums tax to remove exclusion of insurance companies

William S. Lee Act Modifications

- Investment Tax Credit
  - Expand eligibility window for credits calculation from 1 to 2 tax years
  - Permit projects with investment in excess of $100 million to include operating leases in application for investment tax credit

William S. Lee Act Modifications

- Worker Training Tax Credit
  - Modify the WTTC to reimburse businesses for wages paid while employees are in training (capped at $500 per job, $1,000 per job in Tier 1)
  - Would not apply for wages related to production

William S. Lee Act Modifications

- Extension of Carryforward
  - Extend credit usage carryforward from 5 to 20 years for projects greater than $100 million
- Institution of Application Fees
  - Establish a $75 application fee for the William S. Lee Act tax credits

William S. Lee Act Modifications

- Permit tax credit eligibility to a company that acquires a North Carolina business in 'imminent threat' of closure or employee buyout
- Track Federal law by establishing alternate incremental credit for research and development

Establishing
State Development Zones

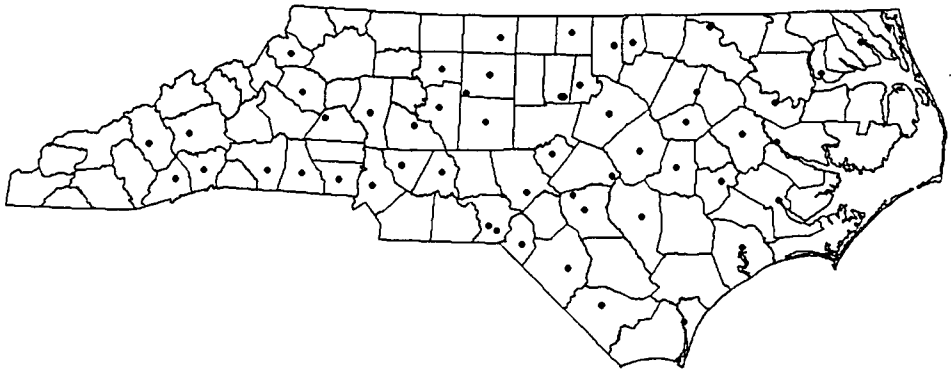
Establishing
State Development Zones

- **Purpose:** To bring economic development to 'pockets of poverty' in municipalities throughout the state that have not shared in the economic gains of the state as a whole

Qualifications

- **Income Standard:** over 20% poverty
- **Boundaries:** contiguous census tracts or block groups that meet the income standard; 1,000 population in zone
- **Municipal Status:** zone must be located within a municipality of at least 5,000 population

Potential State Development Zones



Municipalities with Potential State Development Zones

Albermarle	Asheboro	Asheville (2)	Boone
Brevard	Carrboro	Chapel Hill	Charlotte (2)
Clinton	Concord	Dunn	Durham (3)
Edenton	Elizabeth City	Fayetteville	Forest City
Gastonia	Goldsboro	Greenville	Hamlet
Henderson	Hendersonville	Hickory	High Point (2)
Jacksonville (2)	Kinston	Laurinburg	Lenoir
Lexington	Lumberton	New Bern	Oxford
Raleigh (2)	Reidsville	Roanoke Rapids	Rockingham
Rocky Mount	Roxboro	Salisbury	Sanford
Shelby	Smithfield	Southern Pines	Spring Lake
Statesville	Washington	Waynesville	Whiteville
Williamston	Wilmington (3)	Wilson	Winston-Salem

Tax Credit Incentives

- $4,000 credit for creating jobs in zone, in addition to basic William S. Lee Act job credits
- 7% credit for investing in machinery and equipment (with no threshold requirement)
- $1,000 worker training credit

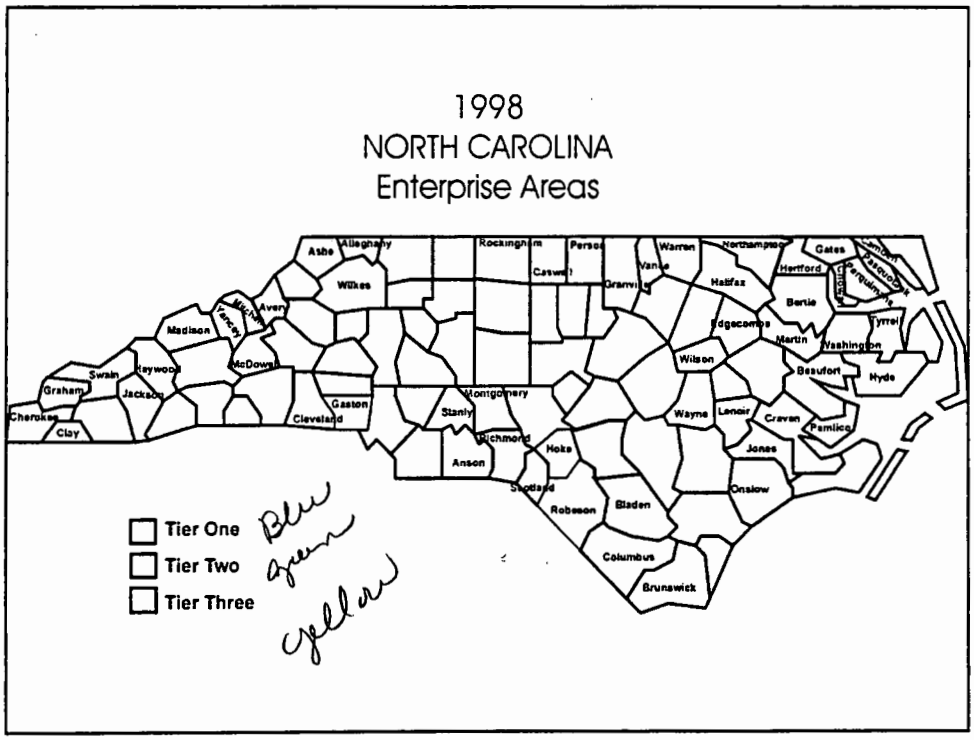
Zone Funding

- $2,000,000 proposed in 1998-99 budget
- Competitive grants up to $200,000 to local governments for job-creating projects
- Additional Community Development Block Grant funds will be made available to support the program in eligible communities

Modifications to Industrial Development Fund Statutes

Modifications to Industrial Development Fund Statutes

- Expand IDF statute to extend the Utility Fund, which is currently restricted to Tier 1 counties only, to also include Tier 2 counties
- Increase current IDF maximum per project from $400,000 to $500,000
- Increase the amount per job funding level from $4,000 to $5,000



Modifications to Industrial Development Fund Statutes

- Expand the businesses eligible for funding from solely manufacturing to all industries eligible for the Lee Act
- Allow a local government receiving funds to use up to 2% of funds to administer the grant or loan

Air Courier Hubs

Infrastructure Investment

- Creates 21st century infrastructure
- Connects North Carolina to growing air courier industry
- Attracts other companies interested in 'just in time' delivery

Federal Express: The Project

- FedEx: Federal Express is the largest express transportation company in the world
- Employment: Estimated at 750 initially in 2003 (225 full-time, 525 part-time);
  1,500 by 2007 (500 full-time, 1,000 part-time)
- Investment: Approximately $300 million

FedEx: The Benefits

- Economic impact of $2.4 billion over 10 years (Jud Study, UNC-Greensboro)
- Good-paying jobs
  - $34,000/yr. average full-time wage
  - $8-$10/hour part-time wage
- No-layoff policy
  - In the past 2 years, added over 6,000 domestic jobs
  - Rank in the top five in the nation for job creation

FedEx: The Benefits

- Promote from within
  - In past 4 years, have moved more than 21,000 employees from part-time to full-time
- Full benefits package (health, dental, vision, pension plan, stock options) for all employees, including part-time
- Tuition reimbursement program for all employees, including part-time

FedEx: The Impact

- FedEx - Alliance/Ft. Worth (since 1994)
  - —7,500 additional jobs created within sixty mile radius
  - —$700 million in new investment by companies that located or expanded near hub
  - —Intel, Motorola, Eli Lily, Comp USA
- FedEx - Indianapolis (since 1988)
  - —More than sixty manufacturing and distribution companies have expanded or located there as a result of the hub
  - —Siecor, Bayer Pharmaceutical, John Deere
- FedEx - Memphis (since 1980)
  - —3,177 jobs created by customers of FedEx
  - —$247 million in new investment

Air Courier Hubs: Proposed Legislation

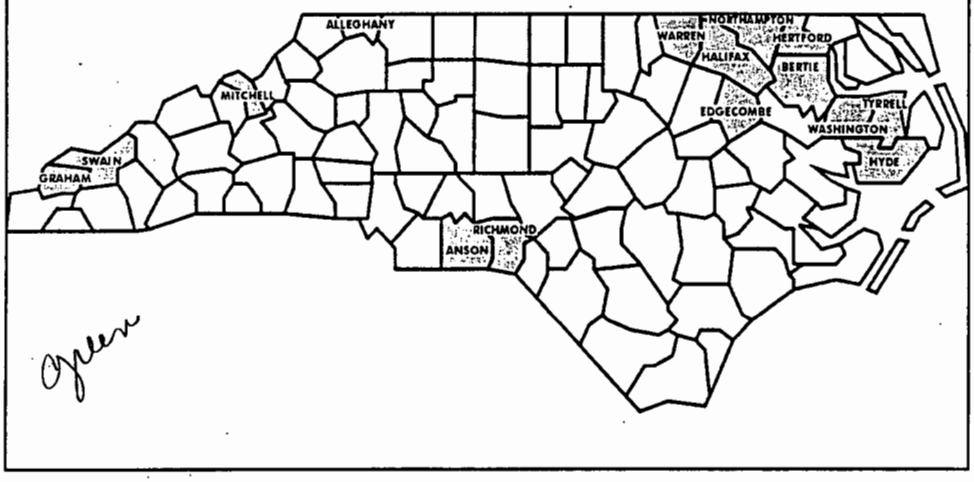
- Add material handling equipment and racking systems to list of eligible equipment to qualify for 1%/$80 sales and use tax cap per single item
- Eliminate sales tax on annual purchases of aircraft parts, lubricants and accessories

Air Courier Hubs: Proposed Legislation

- Exempt property tax on aircraft owned by an air courier and used at courier's hub in this State
- Exempt Piedmont Triad International Airport Authority from 'low bid' requirement
  - Sunset of January 1, 2004
  - Only applies to design & construction of air freight distribution facility

Tier 1 Recycling Facilities

North Carolina's Tier 1 Enterprise Areas



Nucor Corporation: The Project

- Investment: $300 million
- Employment: 300 with $60,000/yr. average wage
- Location: Hertford County (Tier 1 County)
- Product: Plate Steel
- Capacity: 1 million tons/year

Nucor Corporation: The Project

- The Company: Nucor is the second largest steel producer in the U.S. and is head-quartered in Charlotte. Nucor employs over 6,000 people and has 29 facilities in the U.S. and the West Indies.

Nucor Corporation: The Benefits

- High wage ($60,000/yr. average salary) jobs in distressed, rural counties
- Full health benefits package for employees and dependents
- Educational assistance for college-bound children of employees

Nucor Corporation: The Benefits

- No-layoff policy
- Estimated $2 billion impact on local region over 25 years

Nucor Corporation: The Impact

- Documented 'spin off' effect at other Nucor facilities:
  - **Berkeley, SC**: Since 1995, 13 suppliers/customers located or committed to locate by the facility which will generate $158 million in investment and created 650 jobs.
  - **Hickman, AR**: Since 1992, 14 suppliers/customers located by the facility creating $100 million in investment and 1,150 jobs.
  - **Average wage at these facilities:** $44,100 per year

Tier 1 Recycling Facilities: Proposed Legislation

- Investment Tax Credit
  - Increase credit to 50% for recycling facilities in Tier 1 counties who invest over $300 million
  - Allow 25 year carryforward
  - Increase credit to 20% for recycling facilities in Tier 1 counties who invest over $150 million

Tier 1 Recycling Facilities: Proposed Legislation

- Eliminate state sales tax on non-process electricity
- Refund sales tax on construction materials
- Reduce to 1%/$80 per item sales tax on annual purchases on material handling and production equipment and machinery

Tier 1 Recycling Facilities: Proposed Legislation

- Reinvestment Tax Credit
  - To equalize transportation cost differential
  - 10 year sunset with yearly cap
  - Money must be used for:
    - 1) Transportation improvements (rail, dredging, etc.) or
    - 2) Industrial sites and infrastructure in the county

    After 1 & 2 are exhausted, money may then be used to reinvest in property, plant and equipment at the site (over and above initial $300 million)

Fiscal Note

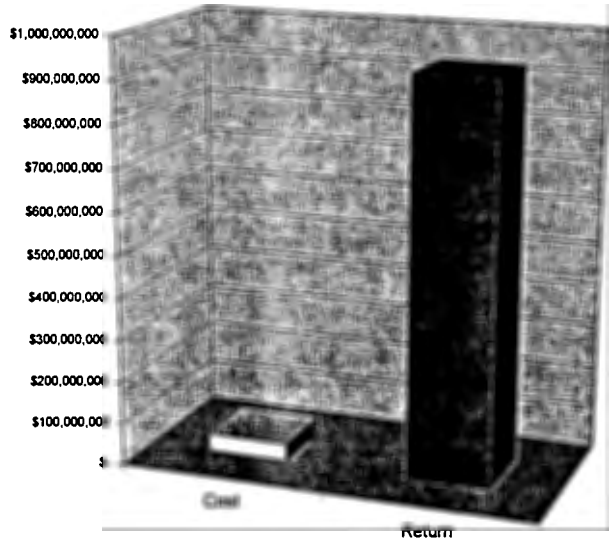
5-year Projections

	98-99	99-00	00-01	01-02	02-03
WSLee **	$0	$0	$1,800,000	$2,475,000	$2,962,500
App. Fee ***	($60,000)	($60,000)	($72,600)	($79,860)	($87,846)
Zones	$0	$0	$423,455	$1,270,364	$2,540,726
Air Courier	$0	$0	$0	$300,000	$600,000
T1 Recycl.	$1,537,500	$2,250,000	$3,147,500	$6,965,000	$9,910,000
TOTAL	**$1,477,500**	**$2,190,000**	**$5,298,355**	**$10,930,504**	**$15,925,380**

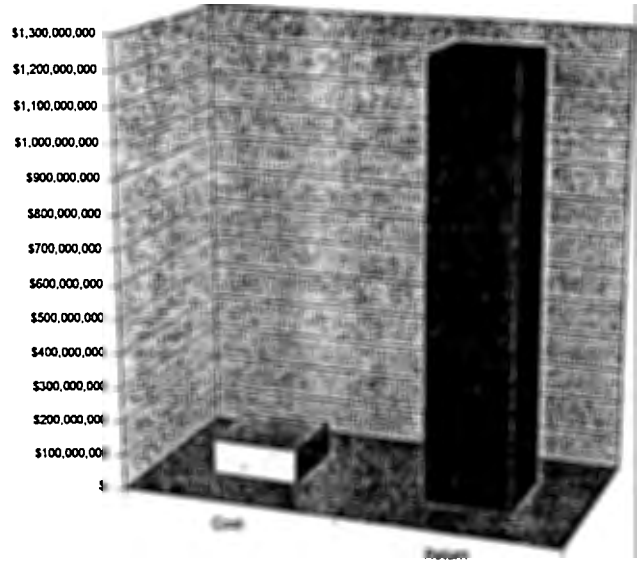
** Includes estimate for the investment tax credit modification, but does not include estimate for R&D tax credit

*** $75 per application at an average of approximately 800 applications per year. Outyear projections assume 10% annual increase in applications.

Return on Investment for FedEx Incentive Package:
Net Present Value of Total Impacts, 1998-2022



Return on Investment for Nucor Incentive Package:
Net Present Value of Total Impacts, 1998-2022



Federal Express and the Workforce

- Federal Express was honored by the state of Tennessee for hiring 200 people off the welfare rolls in the last two years. Gov. Don Sundquist presented the Families First Large Employer of the Year award to Federal Express during a Families First "Best Practice" conference in Gatlinburg on June 9.

- Of the new Families First employees, 20 percent have already received promotions. The retention rate of these employees has been high: 62 percent.

- The annual starting salary for part-time employees at the Mid-Atlantic hub will be $9 an hour. Part-time employees receive the same benefits as full-time workers: full health, dental and vision insurance; 401(k) and pension plans; and up to $2,000 a year in college tuition reimbursement.

- All employees are guaranteed 17.5 hours a week, and the company is one of the few in the nation to offer a "no layoff" policy.

- The annual salary and benefits package for a part-time employee who works the minimum number of hours (at $9 an hour, with two weeks off for vacation) would total $11,812. If he or she averaged 25 hours a week, the annual total would be $16,875.

- *Fortune* and *Mother Jones* magazines have both named Federal Express one of the 20 best companies to work for in America. A book, *The 100 Best Companies to Work for in America*, placed Federal Express on its lists for "10 Best Overall Companies," "10 Best for Job Security," "10 Best for Women," and "10 Best for Minorities." The National Minority Business Council awarded the company its "Outstanding Corporate Support Award" in 1996.

- At each Federal Express hub, employees manage their own volunteer office, through which they coordinate thousands of hours of community service to organizations such as the March of Dimes, the United Way, and the Toys for Tots program at Christmas.

- Employees have the privilege of riding in the "jump seat" on company planes free of charge for both business and personal travel.

- When a cargo airplane is added to the FedEx fleet, employees have an opportunity to name it by submitting their children's names for a drawing.

- Dr. G. Donald Jud Jr., a professor at the Bryan School of Business at the University of North Carolina at Greensboro, estimates that the Mid-Atlantic hub will add more than 2,500 jobs, $51 million in annual salaries, and $4.1 million to the state and local tax bases. By 2013, the new hub will have had a $2.4 billion impact on the Triad.

THE TENNESSEAN

BUSINESS

E

Local stocks 4E
Mutual funds 5E

Job retention high for welfare workers

By BONNA M. de la CRUZ
Staff Writer

GATLINBURG, Tenn. — Workers hired from the welfare pool have a retention rate much higher than other workers, Federal Express has found.

That, in part, is why it makes smart business sense for the Memphis-based company to hire Families First participants, said Jim Perkins, FedEx personnel vice president.

Yesterday, FedEx was named the state's "Families First Large Employer of the Year."

Since welfare reform started in September 1996, FedEx has hired 200 welfare participants, Perkins said.

Retention is about 62% for those hired through FedEx Families First, about three to four times better than for other employees, said Mark Bishop, FedEx manager for recruitment in Memphis.

"They're delighted to have the opportunity to work for us, and we're delighted to have them," Perkins said.

Gov. Don Sundquist presented the award at the state's first Families First "Best Practices Conference." About 500 are attending the conference, which runs through today.

Awards also were given to [illegible] small Tennessee employers: [illegible]

EMPLOYMENT

City Health Care in Rhea County; Tag Plastics, an injection molding company in Tracy City; and Aeroquip Inoac, an automotive supplier of exterior trim in Livingston.

Since Families First started, welfare rolls have dropped from 91,500 to 57,000, about a 40% decline.

The program puts an 18-month time limit on welfare checks, and places school, job and parental responsibilities on participants. In exchange, help is provided with child care and transportation.

In a survey, the state found that three-quarters of people who got jobs through Families First still had them three months later.

"This is the best success rate we've ever experienced with a government-sponsored job training and placement program in Tennessee," Sundquist said yesterday.

More than 50 companies statewide were nominated for their efforts to hire Families First participants and provide good wages, benefits and training programs.

Tag Plastics, for instance, hired five Families First participants at jobs that pay more than $6 an hour and provides ongoing training, said state Commissioner Linda Rudolph of the Department of Human Services. ■

VISITOR REGISTRATION SHEET

House Finance — June 16, 1998 — 3-5 pm
Name of Committee — Date — Room 643

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Paula L. Wolf	Covenant with NC's Children
Jim Brown	N.C. State Ports
Chris Fitzsimon	Common Sense Foundation
Carol Cover	BPMHL
AMY JO BAIN	SMITH ANDERSON
Michelle Cook	Weyerhaeuser
Bill Bake	E & Y
Greg Radford	DOR
Sandra Deer	DOR
Charles Collie	DOR
Patti Seawell	DOR
Mary Munchus	Poyner & Spruill

VISITOR REGISTRATION SHEET

Name of Committee: House Finance — Date: June 16, 1998 — 3-5 p.m.

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ossa Swinson	N.C. Center For Public Policy Research
Lee Kindberg	Hoechst Celanese
Laura Hartsell	MCIC
Joe Parker	GHSP
Don Craft	Hertford County manager
Edythe McKinney	Dept of En + Nat Resources
Billy Davis	DOR
Debra Warren	DOR
John Davis	DOR
Kathy Pilaeer	NCGTP Region
Linda Bray	NCDOC
Shaheen Bandukwala	Senator Bob Shaw's Office
Liz Harris	winston-Salem Chamber of Commerce

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Hays Chalmers	N. C. Power
Michael Thompson	NCPower
Doug Misiewicz	IBM
Tommy Hamilton	Hamilton Consulting
Mary Carmichael	Mecklenburg County
	WSNR
Penny Whitehead	Greensboro Area Chamber of Commerce
John Greeting	" " " "
Mike Morgan	FedEx
Brandon Aldridge	N.C. Dept. of Commerce
	NCDOC
Marilyn Johnson	NCDOC

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kirsten Weeks	NC Dept. of Commerce
Ted Johnson	Pied. Triad Airport Auth.
Rob Schofield	NC Justice Ctr.
Hubbell Christopher	Piedmont Triad Airport
Gina Ciscontè	FedEx
Janet L. Mitchum	FDX Corp.
Bill Cooke	Piedmont Triad Airport
CHARLES ARCHER	HALIFAX COUNTY MANAGER
Sandra Hedgepeth	Office of the Gov.
Linwood Cox	NCMSC
Rachel S. Bason	Floyd & Assoc., Winston-Salem
Doug Buttrey	FDX CORP. MEMPHIS, TN

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bob Palmer	FedEx Intgrs. Inc.
Rhonda Raney	NCADC
Dave Dawson	NCDOC
Debbie Hawkins	Charlotte Chamber
Esthena Tapia	Electric Cities of NC Inc.
Yolanda Winstead	Downtown Housing Improvement Corp.
Gregg Warren	Downtown Housing Improvement Corp.
C. Parker	Bone & Associates.
Andy Lomenet	N.C.L.M.
Ann Case	NCRMA
Ed Regan	N.C.A.C.C.
Jessie Weland	visitor

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Chris Hegarty	Electric co-ops

MINUTES

COMMITTEE ON FINANCE

TUESDAY, JUNE 16, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Tuesday, June 16, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Rep. Brawley called the meeting to order and introduced the Pages.

HB-1252 CRIMINAL TAX PENALTY TO HOME COUNTY

Rep. McCombs moved for adoption of the Proposed Committee Substitute for discussion. So moved. He then explained the bill. Rep. Brown moved for a favorable report, unfavorable as to the original bill. Rep. Hensley thanked Rep. McCombs for allowing additional time for consideration to work out some differences. He then explained the pros and cons of the bill. Rep. Hackney questioned staff about filing of the violation. Ms. Carolyn Johnson, Research Division, answered his inquiry. Rep. B. Hunter spoke on the bill and urged adoption. Rep. Cunningham wants to hear from the District Attorney's Office. Rep. McCombs addressed Rep. Cunningham's and Rep. Hensley's concerns and comments. Rep. Hensley spoke again and requested a roll call vote on this bill. Rep. Buchanan spoke in favor of the bill. Chairman Brawley called for the vote. The vote was taken and passed, 1-31.

HB-1737 CENTENNIAL CAMPUS

Rep. Dickson gave a brief overview since the bill had been heard last week. Rep. Howard had a pending amendment which she withdrew. Rep. Neely sent forth an amendment, then withdrew it. Rep. Howard sent forth another amendment. Mr. George Worsley, Vice Chancellor, NCSU spoke on the amendment. Rep. Dickson called on Mr. Jim Newlin, Fiscal Research Division, for clarification. Rep. Capps also questioned staff and Ms. Cindy Avrette responded. Rep. Hackney sent forth an amendment which addressed the Howard amendment. He explained his perfecting amendment. Rep. Howard opposed the Hackney perfecting amendment. Rep. Cunningham spoke in favor of the perfecting amendment and urged support. Chancellor Monteith , NCSU, addressed members in support of the perfecting amendment. Mr. Bill McCoy, Vice President - Finance, General Administration agreed with the Chancellor's comments. Rep. Miller agreed with Rep. Hackney and supports the amendment.

Rep. Berry questioned Chancellor Monteith, Rep. Miller and Mr. Worsley. They all responded. Rep. Berry asked Rep. Howard to explain a 99 year lease. Rep. Howard advised we should use caution before approving things for 99 years. Rep. Wilson spoke in support of the Hackney amendment. Rep. Eddins addressed Rep. Howard's comments and questioned Mr. Worsley about their relationship with the Council of State. Rep. Dickson called for staff to give another clarification of the amendments before the committee. Ms. Avrette explained them again. Mr. Jim Newlin gave additional explanation. Rep. Howard spoke again in support of her amendment. Rep. McMahan agreed with Rep. Eddins' comments and suggested a shorter term age for buildings. Rep. Neely spoke on the bill and the amendments. Chairman Brawley announced this would be sent to a sub-sub-committee. Members of that committee will be, Reps. Dickson, chairman, Howard, Boyd-McIntyre, Miller and Neely.

The meeting adjourned at 9:30.

Robert Brawley
Rep. Brawley, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

TUESDAY, JUNE 16, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

BILLS FOR DISCUSSION:

HB-1252 - Criminal Tax Penalty to Home County	Rep. McCombs
HB-1737 - NCSU Centennial Campus	Rep. Dickson

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1252
PROPOSED COMMITTEE SUBSTITUTE (H1252-CSRK-1)

Short Title: Criminal Tax Penalty to Home County. (Public)

Sponsors:

Referred to: Judiciary I, if favorable, Finance.

May 12, 1998

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 IN WHICH THE VIOLATION OCCURRED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-452 reads as rewritten:

"**§ 115C-452. Fines and forfeitures.**

(a) The clear proceeds of all penalties and forfeitures and of all fines collected in the General Court of Justice in each county shall be remitted by the clerk of the superior court to the county finance ~~officer who shall forthwith~~ officer.

(b) In the case of a criminal violation involving taxes imposed under Chapter 105 of the General Statutes which is not instituted in the county in which the violation occurred, the trial judge shall determine the county or counties in which the violation occurred. The clerk shall then remit the clear proceeds of the fine to the finance officer of the county or counties in which the violation occurred as determined by the trial judge.

(c) Upon receipt of funds under this section, the county finance officer shall determine what portion of the total is due to each local school administrative unit in the county and remit 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."

Section 2. This act becomes effective December 1,1998, and applies to fines imposed on or after that date.

EXPLANATION OF HOUSE BILL 1252
(Proposed Committee Substitute)
Criminal Tax Penalty to Home County

TO: House Finance Committee
FROM: Cindy Avrette and Carolyn Johnson, Committee Counsel
DATE: June 10, 1998
SPONSOR: Rep. McCombs

House Bill 1252 provides that the trial judge, in criminal tax prosecutions not instituted in the county in which the offense occurred, shall determine the county or counties in which the violation occcured. The clerk of superior court shall then remit any criminal fine to the county or counties in which the violation occurred as determined by the trial judge. The bill would become effective December 1, 1998.

Section 7 of Article IX of the North Carolina Constitution provides that the proceeds of penalties, forfeitures, and fines collected "in the several counties" for any breach of the penal laws of the State shall belong to "the several counties" and shall be used only for public schools. The Constitution does not specify which county receives the proceeds of each fine, forfeiture, or penalty. In the case of a civil penalty or forfeiture collected by a State agency, the General Assembly has provided that the proceeds are allocated among all local school boards on the basis of average daily membership. G.S. 115C-457.1 through G.S. 115C-457.3. In the case of a penalty, forfeiture, or fine collected by a State court, the General Assembly has provided that the clerk of superior court shall remit the proceeds to the local finance officer for that county. The local finance officer then distributes the proceeds to the local school boards of that county on the basis of average daily membership. G.S. 115C-452. If a case is transferred from one county to the next, however, the proceeds are remitted by the clerk of court back to the first county. In re Dunlap, 66 N.C. App. 152, 155 (1984).

Most criminal cases are brought in the county where the crime was committed. In criminal tax cases, however, the prosecution generally takes place in Wake County rather than in the county in which the violation occurs. The Department of Revenue finds that it is more efficient to prosecute these cases, which are few in number, in Wake County than to travel throughout the state. Consequently, Wake County currently receives the proceeds of most criminal tax cases that result in a fine. If the Department continues its current practice of prosecuting criminal tax cases in Wake County, House Bill 1252 would require that the proceeds of any fines be remitted to county or counties as determined by the court.

CRIMINAL INVESTIGATIONS DIVISION
CRIMINAL FINES

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

COUNTY	1995	1996	1997
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

COUNTY	1995	1996	1997
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	
TOTALS	95,300.00	122,500.00	100,900.00

ROLL CALL VOTE

31 YES / 1 NO = 32 (TOTAL)

HB# 1252
SB# [redacted] (McCombs)

HOUSE STANDING COMMITTEE ON Finance

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
___	___	ALLRED	✓	___	HIGHTOWER
___	___	ARNOLD	✓	___	JARRELL
___	___	BADDOUR	✓	___	LUEBKE
✓	___	BEALL	___	___	MCCOMAS
✓	___	BERRY	✓	___	MCCOMBS
✓	___	BOYD-MCINTYRE	✓	___	MCMAHAN
✓	___	BROWN	___	___	MERCER
✓	___	BUCHANAN	✓	___	MILLER
✓	___	CAPPS	___	___	MINER
✓	___	CARPENTER	___	___	MORGAN
___	___	COLE	✓	___	MORRIS
___	___	CRAWFORD	✓	___	NEELY
✓	___	CUNNINGHAM	___	___	NESBITT
✓	___	DECKER	___	___	NICHOLS
✓	___	DEDMON	✓	___	RAMSEY
✓	___	EDDINS	✓	___	RAYFIELD
___	___	FITCH	✓	___	RUSSELL
___	___	GAMBLE	___	___	STARNES
___	___	GOODWIN	___	___	TALLENT
✓	___	HACKNEY	✓	___	WOMBLE
___	X	HENSLEY	___	___	WRIGHT
✓	___	HILL	___	___	
✓	___	HOWARD	___	___	
✓	___	HUNTER	___	___	

___	___	**CHAIRMEN**		
✓	___	GRAY	___	___
✓	___	BRAWLEY	___	___
✓	___	DICKSON	___	___
✓	___	WILSON, C.	___	___
___	___		___	___
___	___		Ex officio Members	
___	___		___	___ Speaker Pro TemWOOD
___	___		___	___ Majority LeaderDAUGHTRY
___	___		___	___ Majority Whip

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1252
Proposed Committee Substitute H1252-PCS4200-RK1

Short Title: Criminal Tax Penalty to Home County. (Public)

Sponsors:

Referred to:

May 12, 1998

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 IN WHICH THE VIOLATION OCCURRED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-452 reads as rewritten:

"**§ 115C-452. Fines and forfeitures.**

(a) The clear proceeds of all penalties and forfeitures and of all fines collected in the General Court of Justice in each county shall be remitted by the clerk of the superior court to the county finance ~~officer who shall forthwith~~ officer.

(b) In the case of a criminal violation involving taxes imposed under Chapter 105 of the General Statutes which is not instituted in the county in which the violation occurred, the trial judge shall determine the county or counties in which the violation occurred. The clerk shall then remit the clear proceeds of the fine to the finance officer of the county or counties in which the violation occurred as determined by the trial judge.

(c) Upon receipt of funds under this section, the county finance officer shall determine what portion of the total is due to each local school administrative unit in the county and remit 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."

Section 2. This act becomes effective December 1, 1998, and applies to fines imposed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1252
Proposed Committee Substitute H1252-PCS4200-RK1

Short Title: Criminal Tax Penalty to Home County. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

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units and the board of county commissioners by the State Board of Education pursuant to G.S. 115C-430."

Section 2. This act becomes effective December 1, 1998, and applies to fines imposed on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ 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.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1737*

Short Title: NCSU Centennial Campus. (Public)

Sponsors: Representative Dickson.

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY INCLUDES THE COLLEGE OF VETERINARY MEDICINE, TO CLARIFY THAT THE BOARD OF GOVERNORS HAS THE AUTHORITY TO DESIGNATE THE REAL ESTATE AND APPURTENANT FACILITIES THAT COMPRISE THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY, TO MODIFY THE AUTHORITY OF THE BOARD OF GOVERNORS WITH REGARD TO CERTAIN TYPES OF DISPOSITIONS OF CENTENNIAL CAMPUS PROPERTY, AND TO EXEMPT CERTAIN REAL ESTATE TRANSACTIONS ON THE CENTENNIAL CAMPUS FROM PAYMENT OF THE STATE LAND SERVICE CHARGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-36.5 reads as rewritten:

"**§ 116-36.5. Centennial Campus trust fund.**

All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term "Centennial Campus" ~~shall mean that real property and~~

~~appurtenant facilities designated by the Board as part of the Centennial Campus of North Carolina State University at Raleigh.~~ is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section."

Section 2. G.S. 116-198.33(4) reads as rewritten:

"(4) The term 'Centennial Campus' ~~shall mean~~ means that real property and appurtenant facilities designated by the Board of Governors as part of the Centennial Campus of the ~~Institution.~~ Institution and includes properties that are not contiguous. The Centennial Campus includes: (i) the real property and appurtenant facilities bounded by Blue Ridge Road, Hillsborough Street, Wade Avenue, and Interstate 440 that are the sites of the College of Veterinary Medicine, the University Club, and the Agricultural Turf Grass Management Program, (ii) the real property and appurtenant facilities that are the former Dix Hospital properties and other contiguous parcels of property that are adjacent to Centennial Boulevard."

Section 3. G.S. 116-198.34 reads as rewritten:

"**§ 116-198.34. General powers of Board of Governors.**

The Board is authorized, subject to the requirements of this Article:

(1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the management, lease, use, or operation of all or any portion of any project or projects and any existing facilities;

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same;

(3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or projects;

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing facilities;

(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities ~~for such period or periods of years, not exceeding 40 years,~~ upon such terms and conditions as the Board determines, subject to the ~~provisions of G.S. 143-341;~~ following:

a. A disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus may be made for a period of 40 years or less and is not subject to the provisions of Chapters 143 and 146 of the General Statutes.

b. A disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus may be made for a period of more than 40 years but is subject to the provisions of Chapters 143 and 146 of the General Statutes.

c. A disposition by easement, lease, or rental agreement of land on the Centennial Campus may be made for an unlimited period of years, but is subject to the provisions of Chapters 143 and 146 of the General Statutes.

d. All other acquisitions and dispositions made under this subdivision are subject to the provisions of Chapter 143 and 146.

e. The Board of Governors shall expedite any request made by the Board of Trustees regarding a disposition under this subdivision.

(6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their compensation;

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article;

(8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided; ~~and~~

(8a) To designate the real property and appurtenant facilities to be included as part of the Centennial Campus located at North Carolina State University at Raleigh; and

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article."

Section 4. G.S. 146-30 is amended by adding a new subsection to read:

"(b1) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands that are designated as part of the Centennial Campus as defined by G.S. 116-198.33(4). All net proceeds of those dispositions are governed by G.S. 116-36.5."

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

SB 1583/HB 1737 – NCSU Centennial Campus

The History

- **The 1987 legislative session provided financing and trust fund legislation that enabled NC State to begin the development of the Centennial Campus.** The 1997 session modified a technical provision of the Umstead Act to permit the university to lease land to private developers for a conference center, residential facilities and retail business support facilities which will permit the fulfillment of the master plan.
- **These legislative acts gave NC State the ability to expand quickly its research and corporate partnering capacity to meet potential corporate partners' needs, and placed those buildings built by private developers and the contents of those buildings into the county's ad valorem tax base. Business enterprises on the Centennial Campus paid the usual sales and corporate income taxes. Upon expiration of the ground lease the buildings will become the property of the university.**
- **It also put corporate partners in day-to-day interactions with research faculty, undergraduate and graduate students in research collaborations and technology transfer.**

The Need

- NC State University, through its Centennial Campus, needs research buildings where corporate partners and university faculty can partner in developing new knowledge and technologies for the economic development of the state. Demand for space is outstripping the facilities currently available.
- To attract corporate partners, the construction of these buildings must be done in a very timely basis that cannot be met within the time frames of current state processes.
- NC State's College of Veterinary Medicine is known nationally for its research in cancer treatments, food safety and other key areas (see attachment A). Many of these discoveries are translatable to human medicine, and as a result, the college has the potential to attract key corporate partners to collaborate in research, to include pharmaceutical companies and the like.

The Request

- **NC State is asking that the legislature include the campus of the College of Veterinary Medicine and the location of other nearby units in the definition of Centennial Campus; give the university the ability to develop ground leases for periods greater than 40 years, since private developers shy away from short-term ground leases; and give the Board of Governors authority to approve building leases.**
- This authority would allow NC State to quickly build the necessary research facilities to house corporate partners and faculty in close proximity to each other for collaborative purposes.
- NC State would still be subject to the authority of The UNC Board of Governors and the Council of State in approving the ground leases.
- Corporate partners and developers would pay property taxes on their equipment and buildings.

Attachment A

SB 1583/HB1737 - NCSU Centennial Campus

1. The CVM's research emphasis on new and emerging infectious diseases of animals and man creates a natural link between the CVM and emerging biotechnology companies. Such companies need access to our animal isolation units and clinical facilities for conducting studies with infectious agents in animals, performing surgeries and necropsies, conducting diagnostic tests, and making radiographs and other medical images. These facilities are particularly attractive to emerging biologics and pharmaceutical companies that do not have such resources within their company.

2. The CVM's research programs in environmental toxicology (which recently received a $2.1 M EPA training grant), cutaneous toxicology and pharmacology, and food safety are expected to provide an ideal partnership for start-up companies. In particular, it would be attractive to those companies developing products based on the application of biotechnology including gene probes for rapid identification of microbiological contaminants.

3. The CVM's cancer treatment program for animals has a partnership venture with Duke University Medical Center. This program provides an opportunity for companies to come to this part of the NC State campus to develop novel approaches for the treatment and control of tumors in people and animals. Access to over 2500 cancer patients per year in the Veterinary Teaching Hospital makes this opportunity especially attractive to companies interested in treating spontaneously occurring tumors.

4. The federally-funded Food Animal Residue Avoidance Database (FARAD) is located in the CVM. This program is developing into a global activity, with support from the World Health Organization and approximately one dozen countries. The CVM campus could become the site for a world-wide program on food animal residues. A global-FARAD facility would attract world-wide visitors and scientists, and would attract interest by world-wide pharmaceutical companies, that would use the global-FARAD databases. This facility would be expected to attract private sector companies interested in food safety and applications to help producers and consumers avoid contamination of food products.

5. The CVM has several technologies that are of interest to biotechnology and biomedical companies. Neurophysiologists at the CVM have developed several genetic variants of calcium channels, cellular components that can be controlled by drugs and which regulate such factors as blood pressure and blood flow. Several companies are interested in this technology. The CVM's programs in virology and immunology serve as a basis for establishment of new vaccines for companion animals and horses, and companies are interested in these technologies.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1737 (First Edition)

SHORT TITLE: NCSU Centennial Campus

SPONSOR(S): Rep. Dickson

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	(see ASSUMPTIONS AND METHODOLOGY)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina State University, UNC Board of Governors

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY: The bill does the following: 1) expands the Centennial Campus at North Carolina State University to include the College of Veterinary Medicine and surrounding land, 2) clarifies that the UNC Board of Governors shall designate what real estate and facilities comprise the Centennial Campus, 3) allows the UNC Board of Governors to approve leases of buildings on the Centennial Campus for periods up to 40 years, 4) allows the Council of State to approve leases of land and buildings on the Centennial Campus for periods greater than 40 years, and 5) exempts Centennial Campus real estate transactions from service charges that are made to the State Land Fund.

ASSUMPTIONS AND METHODOLOGY:

State Land Fund

Section 4 of the bill exempts the Centennial Campus from paying a service charge to the State Land Fund for each of its lease, rental, or easement transactions. There is no fiscal impact from this change, because the Centennial Campus has never paid any fees to the Fund. The bill simply removes a conflict between two statutes. G.S. 146-30 requires that a service charge be paid for

all land or lease transactions, while G.S. 116-36.5 requires that all moneys from development of the Centennial Campus shall go into the Centennial Campus Trust Fund.

Property Tax

The bill has the potential to remove additional land and structures from the property tax rolls in Wake County if the UNC Board of Governors uses the power granted in section 3 of the bill to expand the Centennial Campus to land not currently owned by NC State University. However, under current law, the county could recoup its tax loss in several ways. First, if the Campus land is leased at below market value to a private firm, then the leased land can be taxed. Second, if a private firm leases land from the campus at market value and builds its own building, then Wake county may levy property tax only on the building and its furnishings and equipment. Third, if a private firm leases the land and building from the Campus, then only the furnishings and equipment will be subject to property tax.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: June 10, 1998

EXPLANATION OF HOUSE BILL 1737:
NCSU Centennial Campus

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 11, 1998
SPONSOR: Representative Dub Dickson

House Bill 1737 makes several changes to the statutes concerning the Centennial Campus. The Centennial Campus is comprised of property designated as part of the Campus by the Board of Governors. The bill also specifically provides that the following properties are part of the campus:

- The College of Veterinary Medicine
- The University Club
- The Agricultural Turf Grass Management Program
- The former Dix Hospital properties

Section 3 of the bill provides that rental agreements for space in buildings on the Centennial Campus for a period of 40 years or less are not subject to the oversight of the Department of Administration. Rental agreements for more than 40 years and for rental agreements of an unspecified number of years are still subject to the provisions of Chapter 146 and G.S. 143-341.

Lastly, the bill provides that the rental agreements are not subject to the service charge imposed under G.S. 146-30. As a general rule, a service charge is imposed upon the lease or sale of state property. The amount of the charge may not exceed 10% of the gross amount received from the disposition of the property. The proceeds of the fee are credited to the State Land Fund.

CENTENNIAL CAMPUS

NC STATE UNIVERSITY

CENTENNIAL CAMPUS
PROPOSED LEGISLATION

- DEFINE VETERINARY MEDICINE CAMPUS AS CENTENNIAL CAMPUS
- LENGTHEN TERM OF GROUND LEASE
- DELEGATE BUILDING LEASE AUTHORITY TO BOARD OF GOVERNORS

CENTENNIAL CAMPUS

HISTORY

NC STATE UNIVERSITY

CENTENNIAL CAMPUS
LEGISLATIVE ACTIONS

CENTENNIAL CAMPUS FINANCING ACT

- BOARD OF GOVERNORS AUTHORITY
- REVENUE BONDS AS FINANCING OPTION
- DEBT SERVICING

TRUST FUND ACT

- TRUST FUND ESTABLISHMENT

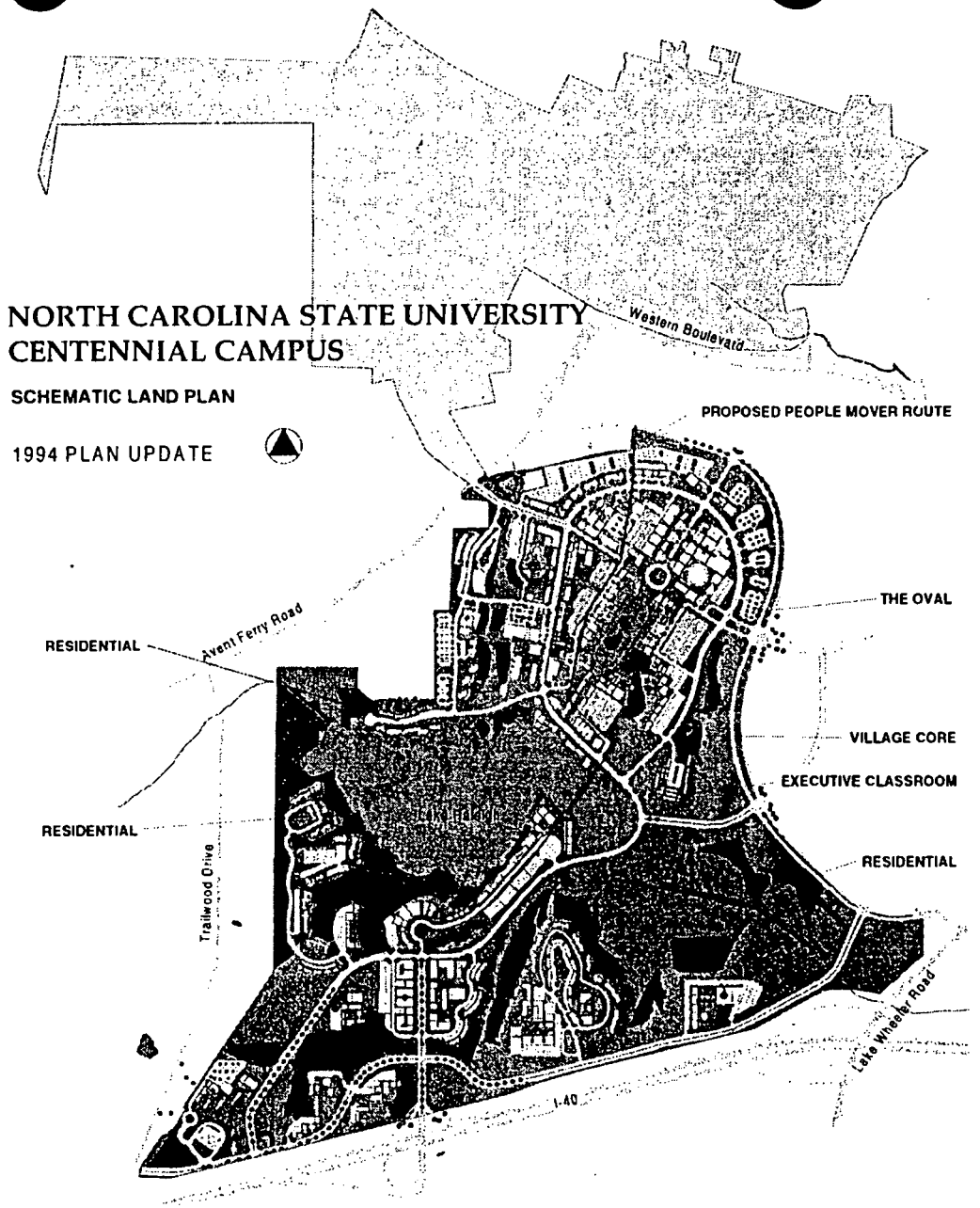
UMSTEAD ACT

- EXEMPTION

CENTENNIAL CAMPUS

MASTER PLAN

NC STATE UNIVERSITY



CENTENNIAL CAMPUS SCHEMATIC LAND PLAN

ACADEMIC	3,126,420
CORPORATE	4,155,065
RESIDENTIAL	3,799,744
RETAIL	629,919
SPECIAL	175,070
TOTAL	11,886,219

NC STATE UNIVERSITY

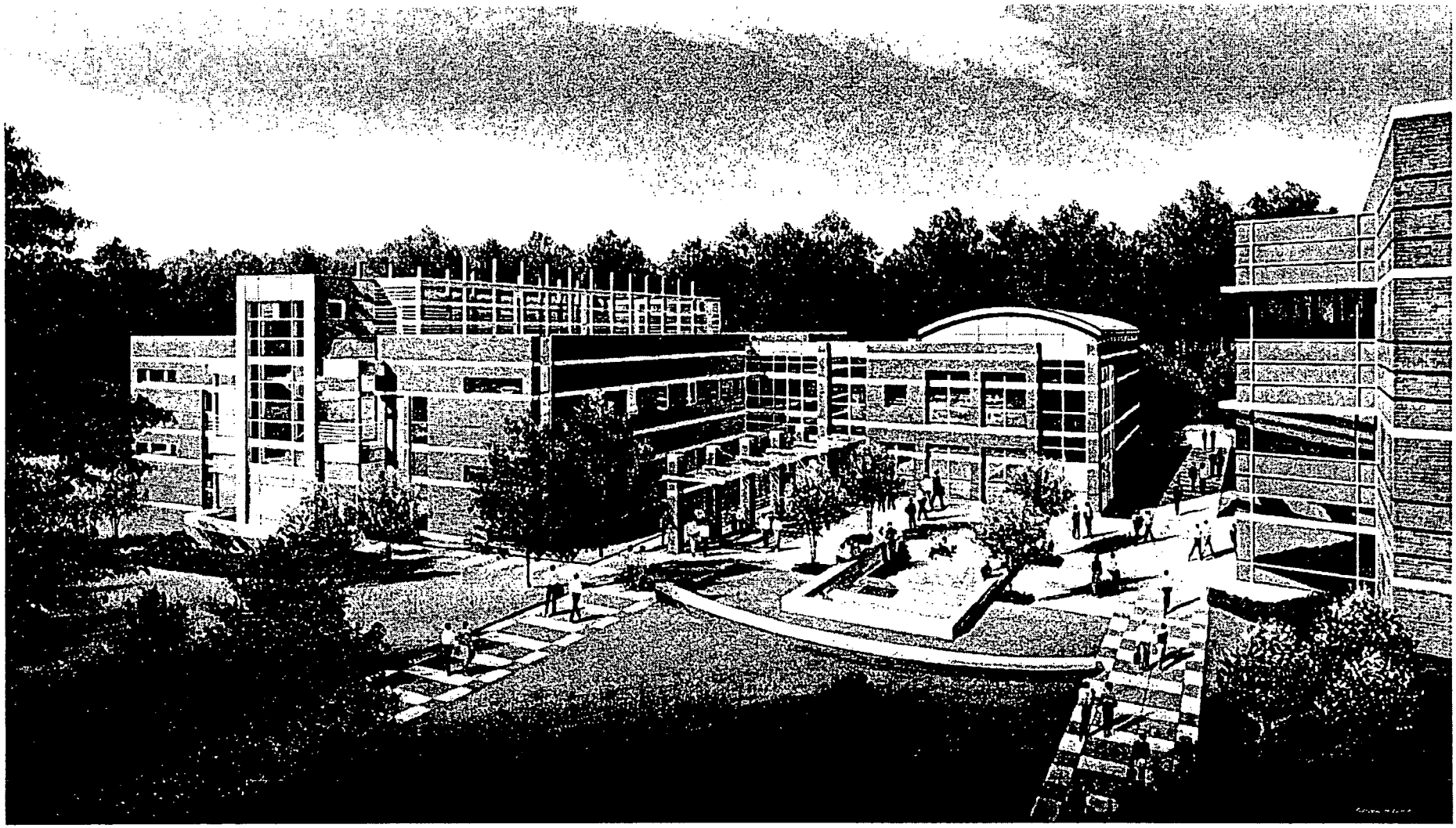
CENTENNIAL CAMPUS

PROGRAMMATIC THEMES

NC STATE UNIVERSITY

CHARACTERISTICS OF PROGRAMMATIC GROUPINGS

- HIGHLY INTERACTIVE PARTNERSHIPS
- THREE MINUTE WALKING RADIUS
- NO FIXED BOUNDARIES
- MAY OVERLAP



TOXICOLOGY BUILDING

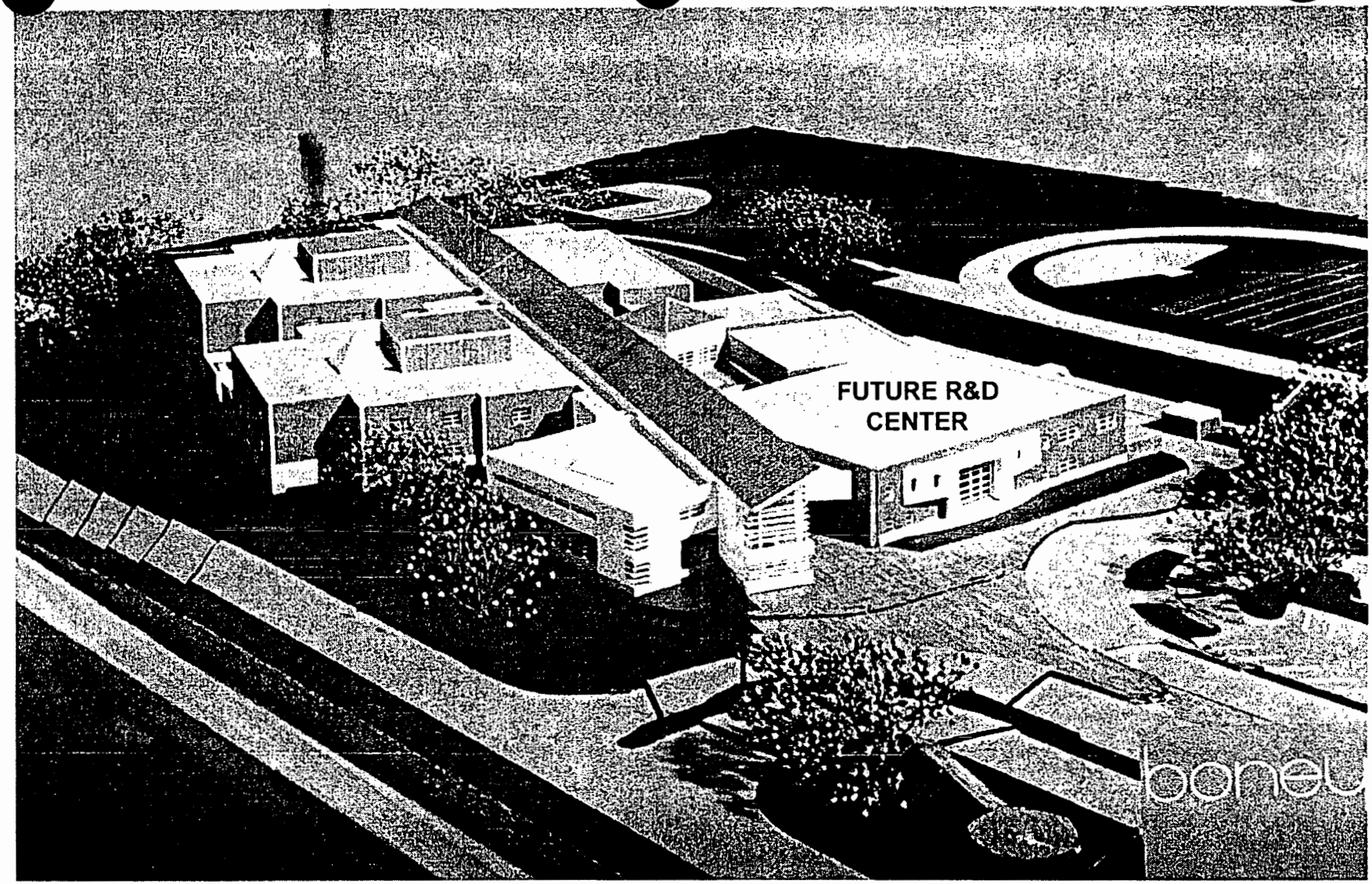
58,500 GSF

$14.8 Million

STATE APPROPRIATION

(IN DESIGN)

NC STATE UNIVERSITY



MAGNET MIDDLE SCHOOL

121,000 GSF
$14 Million
SCHOOL BOND FINANCING
(IN DESIGN)

NC STATE UNIVERSITY

CENTENNIAL CAMPUS
PARTNERSHIPS

- 21 TOTAL ORGANIZATIONS
  - 15 INDUSTRIAL
    (3 LARGE/ 12 SMALL)
  - 3 GOVERNMENTAL
  - 3 NON-PROFIT

ON CAMPUS RELATIONSHIPS

- 14 CENTERS AND INSTITUTES
- 17 DEPARTMENTS IN 5 COLLEGES REPRESENTED
  - COLLEGE OF TEXTILES
  - COLLEGE OF PHYSICAL & MATHEMATICAL SCIENCES
  - COLLEGE OF ENGINEERING
  - COLLEGE OF AGRICULTURAL & LIFE SCIENCES
  - COLLEGE OF MANAGEMENT

CENTENNIAL CAMPUS

- PART OF N C STATE UNIVERSITY
- PROGRAM - RELATED PARTNERSHIPS
- TECHNOLOGY TRANSFER
- SMALL BUSINESSES

CENTENNIAL CAMPUS

DEVELOPMENT STATUS

NC STATE UNIVERSITY

CENTENNIAL CAMPUS

UNIVERSITY DEVELOPED PROJECTS
1989 - PRESENT

BUILDING/ FACILITIES	SQ.FT.	DOLLARS ($ Millions)
Research Building I	33,500	5.7
College of Textiles Complex	298,000	32.7
Corporate Research Building I	70,300	6.2
Infrastructure	3 Phases	7.4
Research Building II	38,800	6.4
Research Building III	25,000	3.5
Research Building IV	82,300	7.7
Partners Building I	81,500	9.1
Engineering Graduate Research Center	130,000	45.5
Centennial Parkway	N/A	9.1
	759,400	$133.3

NC STATE UNIVERSITY

CENTENNIAL CAMPUS

PROJECTS IN PLANNING

NC STATE UNIVERSITY

CENTENNIAL CAMPUS
PROJECTS IN PLANNING

BUILDING/ FACILITIES	SQ.FT.	DOLLARS ($ Millions)
Toxicology Building	58,500	14.8
Partners Building II	80,000	10.0
Magnet Middle School	121,000	14.0
Centennial Campus Housing	150,000	11.5
Private Development Office Building (Phase 1)	100,000	12.5
Executive Conference Center / Hotel & Golf Course	220,000	41.0
	729,500	103.8

NC STATE UNIVERSITY

PRIVATE DEVELOPMENT OFFICE BUILDING

100,000 GSF (PHASE 1)

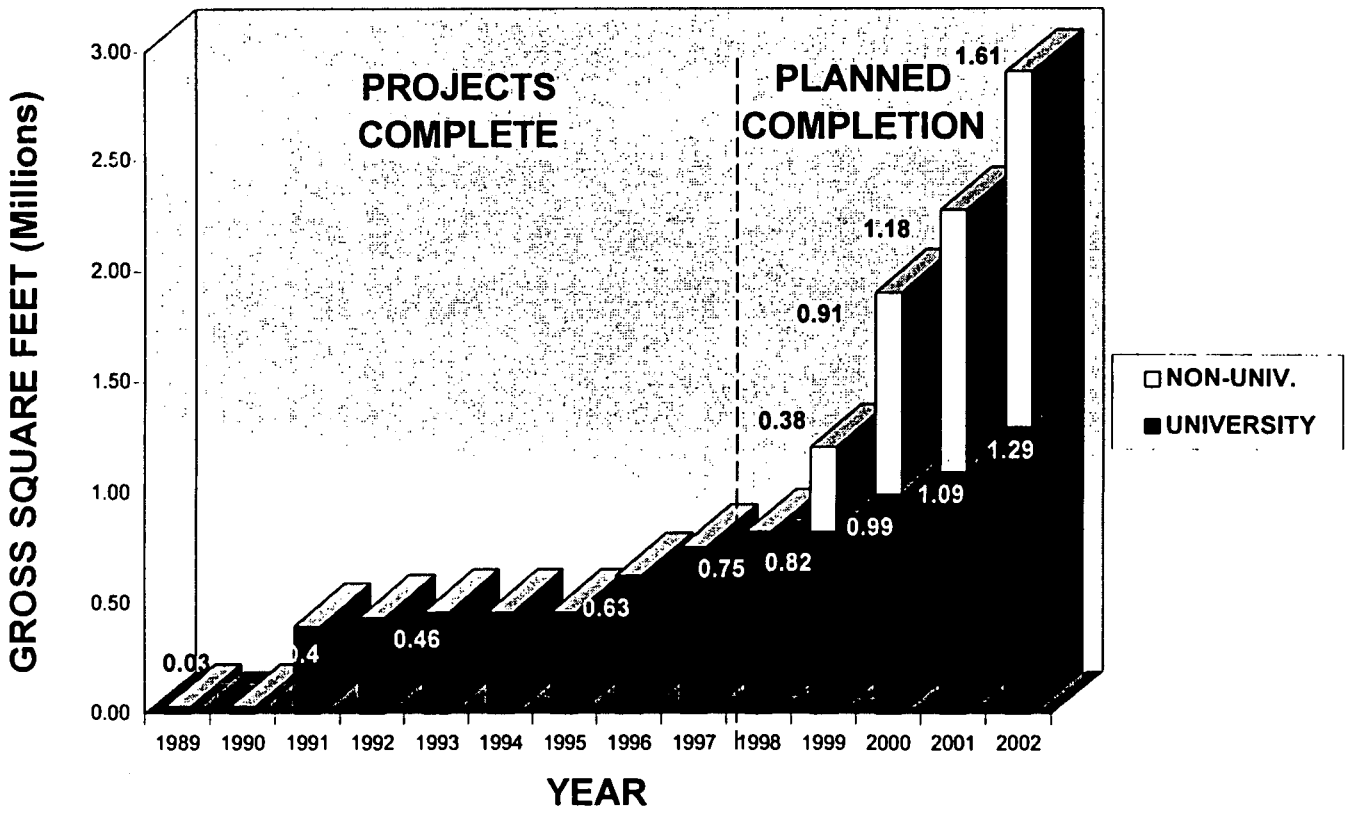
$12.5 Million

PRIVATE DEVELOPER FINANCING

IN NEGOTIATIONS

NC STATE UNIVERSITY

CENTENNIAL CAMPUS
DEVELOPMENT STRATEGY



3/13/98

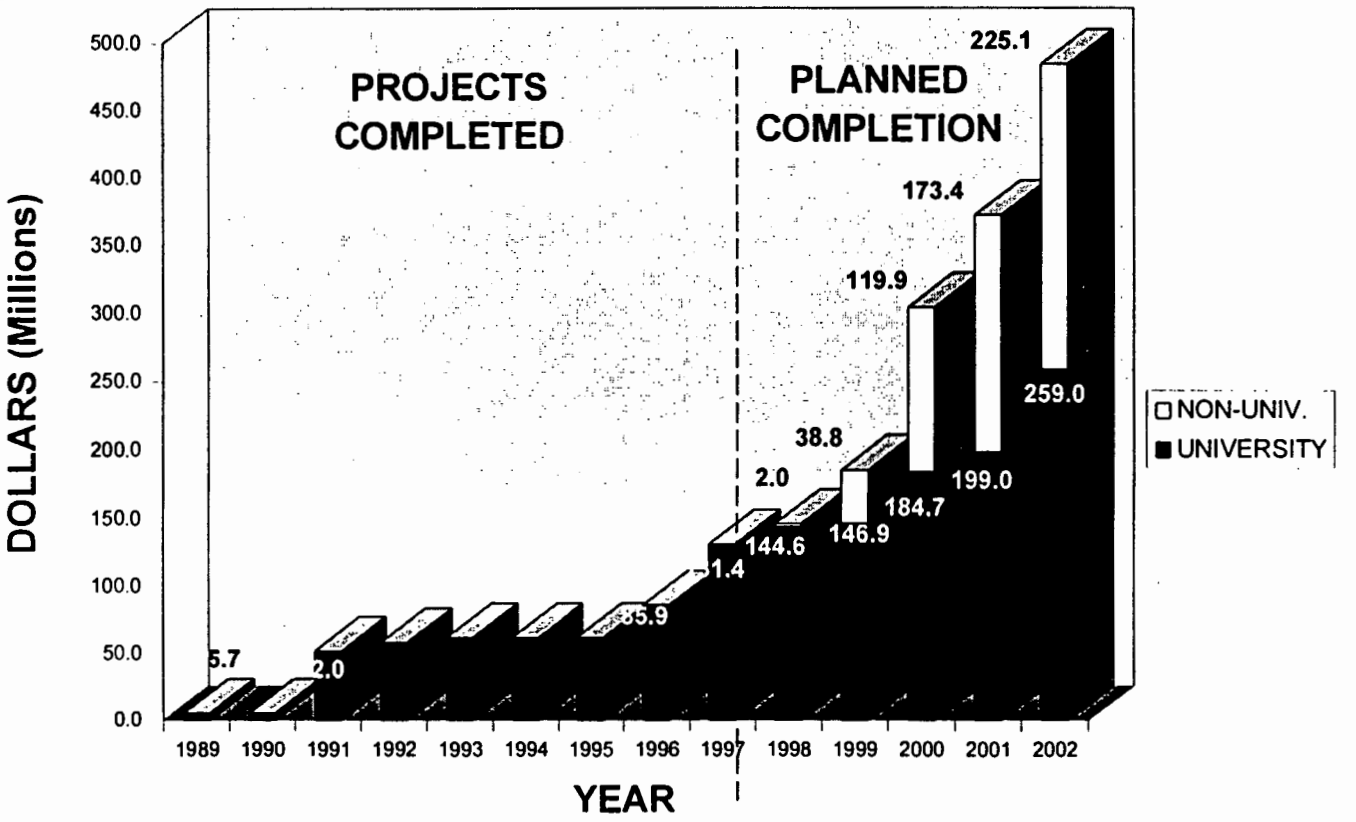
NC STATE UNIVERSITY

CENTENNIAL CAMPUS

FINANCING

NC STATE UNIVERSITY

CENTENNIAL CAMPUS
DOLLARS OF DEVELOPMENT



3/13/98

NC STATE UNIVERSITY

EXPECTATIONS FOR 2002 . . .

- **2.9 MILLION SQUARE FEET**
  (1998 - 750,000 SF)
- **$484+ MILLION INVESTED**
  ($225 MILLION FROM PRIVATE SECTOR)
- **POPULATION OF 8,000+ LIVING/ WORKING ON CAMPUS**
  (1998 - 2,250 PEOPLE)
- **DEBT INCREASED TO $52 MILLION**
  (1998 - $23 MILLION)
- **32+ DEVELOPED SITES AVAILABLE**

CENTENNIAL CAMPUS
PROPOSED LEGISLATION

- DEFINE VETERINARY MEDICINE CAMPUS AS CENTENNIAL CAMPUS
- LENGTHEN TERM OF GROUND LEASE
- DELEGATE BUILDING LEASE AUTHORITY TO BOARD OF GOVERNORS

No vote taken but is sub. sent to committee by Rep. Howard

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1737

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1737-ARB-8

Date_____,1998

Comm. Sub. []
Amends Title [YES]

Representative Howard

moves to amend the bill on page 1, line 10, by deleting "AND";

and on page 1, line 12, by rewriting the line to read:
"SERVICE CHARGE, AND TO LIMIT THE NUMBER OF YEARS STATE PROPERTY CAN BE LEASED TO 99 YEARS.";

and on page 2, line 41 through page 3, line 19, by rewriting the lines to read:

"and any existing facilities for such period or periods of years, not exceeding 40 years, upon such terms and conditions as the Board determines, subject to the provisions of ~~G.S. 143-341;~~ G.S. 143-341 and Chapter 146 of the General Statutes. In addition, a disposition by lease or rental agreement of real or personal property on the Centennial Campus to a for-profit lessee must contain provisions that will ensure that the State's interests in the property are protected. Examples of the types of provisions the lease or rental agreement must contain include the following: the ability of the State to increase the rent to reflect increases in property values, the ability of the State to repossess the property should the lessee default on the terms of the agreement, the insulation of the State from the actions of the lessee, a prohibition against assigning the agreement without the written permission of the State, the right of the State to all real property improvements at the conclusion of the agreement, and the ability of the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1737

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1737-ARB-8 Page 2 of __

State to terminate the agreement if the property is used for any purpose other than the terms of the agreement provide.";

and on page 4, line 1, by rewriting the line to read:

"Section 5. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. -- Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of ~~State provided that if the proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.~~ State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. -- If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations."

Section 6. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Withdrawn

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1737

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1737-ARB-7

Date_____,1998

Comm. Sub. [ ]
Amends Title [YES]

Representative Neely

moves to amend the bill on page 1, line 10,
by deleting "AND"; and

on page 1, line 12,
by rewriting that line to read:
"SERVICE CHARGE, AND TO LIMIT THE NUMBER OF YEARS THAT STATE PROPERTY CAN BE LEASED TO NINETY-NINE YEARS."; and

on page 2, lines 41-42,
by rewriting those lines to read:
"and any existing facilities for such period or periods of years, not exceeding ~~40~~ 99 years, upon such terms and conditions as the Board"; and

and on page 3, lines 10 through 13, by deleting those lines;

and on page 4, line 14, by deleting "d." and substituting "c.";

and on page 4, line 1,
by rewriting that line to read:
"Section 5. G.S. 146-27 reads as rewritten:
"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**
(a) General. -- Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of ~~State; provided that if the proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after~~

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1737

AMENDMENT NO. _____
(to be filled in by Principal Clerk)

H1737-ARB-7 Page 2 of __

~~consultation with the Joint Legislative Commission on Governmental Operations.~~ State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency."

(b) Large Dispositions. -- If the proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations."

Section 6. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Withdrawn

EDITION No. _____

H. B. No. 1737 DATE 6-11-98

S. B. No. _____ Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) ~~Huckaby~~ HOWARD

Sen.)

moves to amend the bill on page 3, line 5 11-12

( ) WHICH CHANGES THE TITLE

by rewriting such lines to read as follows:

"and on the Centennial Campus may be made for a period of not more than 99 years, but is subject to the provisions of"

and on page 2, lines 41 + 42 by rewriting such lines to read

"and any existing facilities for such period or periods of years, not exceeding 99 years, upon such terms and conditions as the Board"

SIGNED ~~Pennington~~ ~~Huckaby~~ Howard

Withdrawn

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

House Finance — June 16, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Susan Harrison	WCPSS
[signature]	NCPC
NORMAN COOPER	CSX. CORP.
Matt Osborne	AOC
GEORGE WORSLEY	NC STATE UNIVERSITY
Charles Moreland	NC State
Oscar Fletcher	NC State
Clifton B. Metcalf	UNC GA
Larry K Monteith	NC State
W O McCoy	UNC GA
Tim Davies	"
[illegible] Hamilton	NC ST

VISITOR REGISTRATION SHEET

Horse Issues

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Tom Dixon	NCDR
David Brown	OSBM
Elizabeth Drovenstein	OSBM
Joe Henderson	State Property Office, DOA
Martha Glass	DOA
Paul Zogas	OSBM
Victoria Hightower	
V L McBride	NCFA
Jim Brotherton	UNC-GA / NCSU Ag Program
Roz Savell	Lobbyist
Beth Melchuck	
Natalie Haskins	Charlotte Chamber

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
A.B. Swindell	BFT
David Simmons	ZDN, PA
Jude Sette	Speaker's Office
Ann V. Davis	Self
John Bowdish	Zeb Alley P.A.
Mary Britt	Hollidon Elementary School
Lu-Ann Coe	777
C. Parker	Bone & Assoc.
Jim Blackburn	NC Association of County Commissioners
Mike Carpenter	NCDTSA
[illegible]	NCAA
Ed Regan	N.C.A.C.C.

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bernard Allen	SOS

MINUTES

COMMITTEE ON FINANCE

THURSDAY, JUNE 11, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Thursday, June 11, 1998, at 8:30 a.m. in room 544-LOB. A silent roll was taken (roll list denotes members present).

Rep. Gray called the meeting to order and introduced the Pages.

HB-1737 NCSU CENTENNIAL CAMPUS

Rep. Dickson explained the bill and introduced the NCSU representatives that were visiting today.

Rep. Hensley spoke in favor of the bill and moved for a favorable report.

Representatives from NCSU were given the opportunity to present a slide presentation to members. Dr. Monteith, Chancellor, Ms. Cathy Hart, University Treasurer and Mr. George Worsley, Vice Chancellor of Finance gave their presentations.

Rep. Dickson sent forth an amendment, explained, and moved for adoption. The vote was taken and the amendment was adopted.

Discussion began about the length of the lease. Rep. Goodwin, Rep. Hensley, Rep. Hackney, and Rep. Cunningham all questioned Mr. Worsley. Mr. Worsley and Mr. Jim Newlin, Fiscal Research Division, responded to their inquiries. Rep. Hackney made additional comments and shared concerns. Rep. Miller had questions regarding the Vet School. Mr. Oscar Fletcher, Dean of Veterinary Medicine, NCSU, and Mr. Bill McCoy, Vice Chancellor of Finance/General Administration, answered his inquiry. Rep. Howard agreed with Rep. Hackney's comments and favored the idea of an amendment to adjust the ground lease provision. Rep. Dickson and Mr. Worsley addressed her comments. Rep. Capps spoke in favor of Rep. Hackney's comments and suggestions. Rep. Hackney questioned Mr. McCoy and asked if they would consider letting the General Assembly address the lease provision every 99 years and he responded. Rep. Hackney advised it should be uniform for all State Buildings and he wasn't singling out NCSU. He urged that measures should be taken for preventive reasons for the future. Rep. Russell asked for examples of corporate financing of the Centennial Campus. Mr. Worsley cited an example. Mr. Newlin, Fiscal Research Division, clarified some restrictions on ground leases for the Centennial Campus which Reps. Hackney and Howard questioned. Rep. Russell asked for clarification of a comment made during the presentation regarding

residential areas for sale or lease. Rep. Dickson responded. Rep. Miller questioned Wake County taxes. Mr. Richard Bostic, Fiscal Research Division responded. Rep. Neely made comments about exempted leases and increased tax bases and urged adoption of the bill as it is without amending the lease factor. Rep. McMahan spoke on lease terms and agreed with Rep. Neely's comments.

Rep. Howard sent forth an amendment regarding lease provision. Rep. Gray read the amendment. Rep. Dickson commented on the amendment and opposed. Rep. Miller also opposed the amendment and asked to reserve the discussion for another day. Rep. Starnes supported the amendment. Rep. Cunningham spoke again in favor of the amendment and questioned staff how this could be worked out without damaging the Centennial Campus. Ms. Cindy Avrette, Research Division responded. Rep. Goodwin and Rep. Howard questioned Sections "B" and "D" of the bill and how the amendment would affect them. Mr. Newlin explained. Rep. Nesbitt asked Rep. Dickson if he would consider removing this from the agenda today and allow staff and the concerns Representatives additional time to resolve this issue without damaging the Centennial Campus. Rep. Neely made comments about this being handled now as it is and them sending it to the Revenue Laws Study Committee. Chairman Gray advised it could be handled in that manner. Rep. Neely then asked Rep. Howard if she would withdraw her amendment, let it pass as is and let the Revenue Laws Study Committee work on perfecting it during the interim. Rep. Howard felt that would be a disservice and did not wish to withdraw her amendment. Rep. Dickson spoke again in favor of the bill and opposed the amendment. Rep. Nesbitt spoke again and asked the sponsor to postpone until the Tuesday, June 16th meeting in order that all of State Government could be considered in the lease terms. Rep. Dickson referred the question to Dr. Monteith who had not objection. Chairman Gray announced this was removed and will be on the agenda for Tuesday, June 16th.

HB-1252 CRIMINAL TAX PENALTY TO HOME COUNTY

Chairman Gray asked the sponsor if he would like to take care of this today, or schedule it for Tuesday, due to the time. Rep. McCombs requested to hear this on Tuesday.

Meeting adjourned at 9:50 a.m.

Rep. Gray, Chairman

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

THURSDAY, JUNE 11, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER

BILLS FOR DISCUSSION:

HB-1252 - Criminal Tax Penalty to Home County	Rep. McCombs
HB-1737 - NCSU Centennial Campus	Rep. Dickson

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1252
PROPOSED COMMITTEE SUBSTITUTE (H1252-CSRK-1)

Short Title: Criminal Tax Penalty to Home County. (Public)

Sponsors:

Referred to: Judiciary I, if favorable, Finance.

May 12, 1998

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 IN WHICH THE VIOLATION OCCURRED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-452 reads as rewritten:

"**§ 115C-452. Fines and forfeitures.**

(a) The clear proceeds of all penalties and forfeitures and of all fines collected in the General Court of Justice in each county shall be remitted by the clerk of the superior court to the county finance ~~officer who shall forthwith~~ officer.

(b) In the case of a criminal violation involving taxes imposed under Chapter 105 of the General Statutes which is not instituted in the county in which the violation occurred, the trial judge shall determine the county or counties in which the violation occurred. The clerk shall then remit the clear proceeds of the fine to the finance officer of the county or counties in which the violation occurred as determined by the trial judge.

(c) Upon receipt of funds under this section, the county finance officer shall determine what portion of the total is due to each local school administrative unit in the county and remit 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."

Section 2. This act becomes effective December 1,1998, and applies to fines imposed on or after that date.

EXPLANATION OF HOUSE BILL 1252
(Proposed Committee Substitute)
Criminal Tax Penalty to Home County

TO: House Finance Committee
FROM: Cindy Avrette and Carolyn Johnson, Committee Counsel
DATE: June 10, 1998
SPONSOR: Rep. McCombs

House Bill 1252 provides that the trial judge, in criminal tax prosecutions not instituted in the county in which the offense occurred, shall determine the county or counties in which the violation occcured. The clerk of superior court shall then remit any criminal fine to the county or counties in which the violation occurred as determined by the trial judge. The bill would become effective December 1, 1998.

Section 7 of Article IX of the North Carolina Constitution provides that the proceeds of penalties, forfeitures, and fines collected "in the several counties" for any breach of the penal laws of the State shall belong to "the several counties" and shall be used only for public schools. The Constitution does not specify which county receives the proceeds of each fine, forfeiture, or penalty. In the case of a civil penalty or forfeiture collected by a State agency, the General Assembly has provided that the proceeds are allocated among all local school boards on the basis of average daily membership. G.S. 115C-457.1 through G.S. 115C-457.3. In the case of a penalty, forfeiture, or fine collected by a State court, the General Assembly has provided that the clerk of superior court shall remit the proceeds to the local finance officer for that county. The local finance officer then distributes the proceeds to the local school boards of that county on the basis of average daily membership. G.S. 115C-452. If a case is transferred from one county to the next, however, the proceeds are remitted by the clerk of court back to the first county. In re Dunlap, 66 N.C. App. 152, 155 (1984).

Most criminal cases are brought in the county where the crime was committed. In criminal tax cases, however, the prosecution generally takes place in Wake County rather than in the county in which the violation occurs. The Department of Revenue finds that it is more efficient to prosecute these cases, which are few in number, in Wake County than to travel throughout the state. Consequently, Wake County currently receives the proceeds of most criminal tax cases that result in a fine. If the Department continues its current practice of prosecuting criminal tax cases in Wake County, House Bill 1252 would require that the proceeds of any fines be remitted to county or counties as determined by the court.

CRIMINAL INVESTIGATIONS DIVISION
CRIMINAL FINES

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

COUNTY	1995	1996	1997
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

COUNTY	1995	1996	1997
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	
TOTALS	95,300.00	122,500.00	100,900.00

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1737*

Short Title: NCSU Centennial Campus. (Public)

Sponsors: Representative Dickson.

Referred to: Finance.

June 1, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY INCLUDES THE COLLEGE OF VETERINARY MEDICINE, TO CLARIFY THAT THE BOARD OF GOVERNORS HAS THE AUTHORITY TO DESIGNATE THE REAL ESTATE AND APPURTENANT FACILITIES THAT COMPRISE THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY, TO MODIFY THE AUTHORITY OF THE BOARD OF GOVERNORS WITH REGARD TO CERTAIN TYPES OF DISPOSITIONS OF CENTENNIAL CAMPUS PROPERTY, AND TO EXEMPT CERTAIN REAL ESTATE TRANSACTIONS ON THE CENTENNIAL CAMPUS FROM PAYMENT OF THE STATE LAND SERVICE CHARGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-36.5 reads as rewritten:

"**§ 116-36.5. Centennial Campus trust fund.**

All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term "Centennial Campus" ~~shall mean that real property and~~

~~appurtenant facilities designated by the Board as part of the Centennial Campus of North Carolina State University at Raleigh.~~ is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section."

Section 2. G.S. 116-198.33(4) reads as rewritten:

"(4) The term 'Centennial Campus' ~~shall mean~~ means that real property and appurtenant facilities designated by the Board of Governors as part of the Centennial Campus of the ~~Institution.~~ Institution and includes properties that are not contiguous. The Centennial Campus includes: (i) the real property and appurtenant facilities bounded by Blue Ridge Road, Hillsborough Street, Wade Avenue, and Interstate 440 that are the sites of the College of Veterinary Medicine, the University Club, and the Agricultural Turf Grass Management Program, (ii) the real property and appurtenant facilities that are the former Dix Hospital properties and other contiguous parcels of property that are adjacent to Centennial Boulevard."

Section 3. G.S. 116-198.34 reads as rewritten:

"**§ 116-198.34. General powers of Board of Governors.**

The Board is authorized, subject to the requirements of this Article:

(1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the management, lease, use, or operation of all or any portion of any project or projects and any existing facilities;

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same;

(3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or projects;

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing facilities;

(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities ~~for such period or periods of years, not exceeding 40 years,~~ upon such terms and conditions as the Board determines, subject to the ~~provisions of G.S. 143-341;~~ following:

a. A disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus may be made for a period of 40 years or less and is not subject to the provisions of Chapters 143 and 146 of the General Statutes.

b. A disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus may be made for a period of more than 40 years but is subject to the provisions of Chapters 143 and 146 of the General Statutes.

c. A disposition by easement, lease, or rental agreement of land on the Centennial Campus may be made for an unlimited period of years, but is subject to the provisions of Chapters 143 and 146 of the General Statutes.

d. All other acquisitions and dispositions made under this subdivision are subject to the provisions of Chapter 143 and 146.

e. The Board of Governors shall expedite any request made by the Board of Trustees regarding a disposition under this subdivision.

(6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their compensation;

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article;

(8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided; ~~and~~

(8a) To designate the real property and appurtenant facilities to be included as part of the Centennial Campus located at North Carolina State University at Raleigh; and

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article."

Section 4. G.S. 146-30 is amended by adding a new subsection to read:

"(b1) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands that are designated as part of the Centennial Campus as defined by G.S. 116-198.33(4). All net proceeds of those dispositions are governed by G.S. 116-36.5."

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

SB 1583/HB 1737 – NCSU Centennial Campus

The History

- **The 1987 legislative session provided financing and trust fund legislation that enabled NC State to begin the development of the Centennial Campus.** The 1997 session modified a technical provision of the Umstead Act to permit the university to lease land to private developers for a conference center, residential facilities and retail business support facilities which will permit the fulfillment of the master plan.
- **These legislative acts gave NC State the ability to expand quickly its research and corporate partnering capacity to meet potential corporate partners' needs, and placed those buildings built by private developers and the contents of those buildings into the county's ad valorem tax base. Business enterprises on the Centennial Campus paid the usual sales and corporate income taxes. Upon expiration of the ground lease the buildings will become the property of the university.**
- **It also put corporate partners in day-to-day interactions with research faculty, undergraduate and graduate students in research collaborations and technology transfer.**

The Need

- NC State University, through its Centennial Campus, needs research buildings where corporate partners and university faculty can partner in developing new knowledge and technologies for the economic development of the state. Demand for space is outstripping the facilities currently available.
- To attract corporate partners, the construction of these buildings must be done in a very timely basis that cannot be met within the time frames of current state processes.
- NC State's College of Veterinary Medicine is known nationally for its research in cancer treatments, food safety and other key areas (see attachment A). Many of these discoveries are translatable to human medicine, and as a result, the college has the potential to attract key corporate partners to collaborate in research, to include pharmaceutical companies and the like.

The Request

- **NC State is asking that the legislature include the campus of the College of Veterinary Medicine and the location of other nearby units in the definition of Centennial Campus; give the university the ability to develop ground leases for periods greater than 40 years, since private developers shy away from short-term ground leases; and give the Board of Governors authority to approve building leases.**
- This authority would allow NC State to quickly build the necessary research facilities to house corporate partners and faculty in close proximity to each other for collaborative purposes.
- NC State would still be subject to the authority of The UNC Board of Governors and the Council of State in approving the ground leases.
- Corporate partners and developers would pay property taxes on their equipment and buildings.

Attachment A

SB 1583/HB1737 - NCSU Centennial Campus

1. The CVM's research emphasis on new and emerging infectious diseases of animals and man creates a natural link between the CVM and emerging biotechnology companies. Such companies need access to our animal isolation units and clinical facilities for conducting studies with infectious agents in animals, performing surgeries and necropsies, conducting diagnostic tests, and making radiographs and other medical images. These facilities are particularly attractive to emerging biologics and pharmaceutical companies that do not have such resources within their company.

2. The CVM's research programs in environmental toxicology (which recently received a $2.1 M EPA training grant), cutaneous toxicology and pharmacology, and food safety are expected to provide an ideal partnership for start-up companies. In particular, it would be attractive to those companies developing products based on the application of biotechnology including gene probes for rapid identification of microbiological contaminants.

3. The CVM's cancer treatment program for animals has a partnership venture with Duke University Medical Center. This program provides an opportunity for companies to come to this part of the NC State campus to develop novel approaches for the treatment and control of tumors in people and animals. Access to over 2500 cancer patients per year in the Veterinary Teaching Hospital makes this opportunity especially attractive to companies interested in treating spontaneously occurring tumors.

4. The federally-funded Food Animal Residue Avoidance Database (FARAD) is located in the CVM. This program is developing into a global activity, with support from the World Health Organization and approximately one dozen countries. The CVM campus could become the site for a world-wide program on food animal residues. A global-FARAD facility would attract world-wide visitors and scientists, and would attract interest by world-wide pharmaceutical companies, that would use the global-FARAD databases. This facility would be expected to attract private sector companies interested in food safety and applications to help producers and consumers avoid contamination of food products.

5. The CVM has several technologies that are of interest to biotechnology and biomedical companies. Neurophysiologists at the CVM have developed several genetic variants of calcium channels, cellular components that can be controlled by drugs and which regulate such factors as blood pressure and blood flow. Several companies are interested in this technology. The CVM's programs in virology and immunology serve as a basis for establishment of new vaccines for companion animals and horses, and companies are interested in these technologies.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1737 (First Edition)

SHORT TITLE: NCSU Centennial Campus

SPONSOR(S): Rep. Dickson

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	(see **ASSUMPTIONS AND METHODOLOGY**)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina State University, UNC Board of Governors

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY: The bill does the following: 1) expands the Centennial Campus at North Carolina State University to include the College of Veterinary Medicine and surrounding land, 2) clarifies that the UNC Board of Governors shall designate what real estate and facilities comprise the Centennial Campus, 3) allows the UNC Board of Governors to approve leases of buildings on the Centennial Campus for periods up to 40 years, 4) allows the Council of State to approve leases of land and buildings on the Centennial Campus for periods greater than 40 years, and 5) exempts Centennial Campus real estate transactions from service charges that are made to the State Land Fund.

ASSUMPTIONS AND METHODOLOGY:

State Land Fund

Section 4 of the bill exempts the Centennial Campus from paying a service charge to the State Land Fund for each of its lease, rental, or easement transactions. There is no fiscal impact from this change, because the Centennial Campus has never paid any fees to the Fund. The bill simply removes a conflict between two statutes. G.S. 146-30 requires that a service charge be paid for

all land or lease transactions, while G.S. 116-36.5 requires that all moneys from development of the Centennial Campus shall go into the Centennial Campus Trust Fund.

Property Tax

The bill has the potential to remove additional land and structures from the property tax rolls in Wake County if the UNC Board of Governors uses the power granted in section 3 of the bill to expand the Centennial Campus to land not currently owned by NC State University. However, under current law, the county could recoup its tax loss in several ways. First, if the Campus land is leased at below market value to a private firm, then the leased land can be taxed. Second, if a private firm leases land from the campus at market value and builds its own building, then Wake county may levy property tax only on the building and its furnishings and equipment. Third, if a private firm leases the land and building from the Campus, then only the furnishings and equipment will be subject to property tax.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: June 10, 1998

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1737

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1737-ALH-1 Page 1 of __

Date_____,1998

Comm. Sub. [ ]
Amends Title [ ]

Representative Dickson

1 moves to amend the bill on page 3, lines 17-19,
2 by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

EXPLANATION OF HOUSE BILL 1737:
NCSU Centennial Campus

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 11, 1998
SPONSOR: Representative Dub Dickson

House Bill 1737 makes several changes to the statutes concerning the Centennial Campus. The Centennial Campus is comprised of property designated as part of the Campus by the Board of Governors. The bill also specifically provides that the following properties are part of the campus:

- The College of Veterinary Medicine
- The University Club
- The Agricultural Turf Grass Management Program
- The former Dix Hospital properties

Section 3 of the bill provides that rental agreements for space in buildings on the Centennial Campus for a period of 40 years or less are not subject to the oversight of the Department of Administration. Rental agreements for more than 40 years and for rental agreements of an unspecified number of years are still subject to the provisions of Chapter 146 and G.S. 143-341.

Lastly, the bill provides that the rental agreements are not subject to the service charge imposed under G.S. 146-30. As a general rule, a service charge is imposed upon the lease or sale of state property. The amount of the charge may not exceed 10% of the gross amount received from the disposition of the property. The proceeds of the fee are credited to the State Land Fund.

VISITOR REGISTRATION SHEET

House Finance — June 11, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
V L McBride	NCBA
Natalie Haskins	Charlotte Chamber
Ed Regan	N.C. Assoc. of Co. Comm.
Bill Scoggin	NC BAR Assoc.
O Lyon	OSBM
W O McCoy	UNC
Clifton Metcalfe	"
Jeff Davies	"
Dean Fletcher	College of Vet Med, NCSU
Ted Campbell	NCSU CVM
Matt Osborne	AOC
Jane Brotherton	UNC-GA / NCSU Ag Program

VISITOR REGISTRATION SHEET

Horse Issues

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Joyce	SEANC
Brenda Simmons	NC Equity
Jeb Alley	ZDA PA
Pat Stafford	SEANC
Jim Stevens	FSP
Paula Schubert	SEANC
Alice Garland	~~Duke~~ Electricities
Andy Romanet	N.C.L.M.
R. Paul Wilms	NCMBA
Bernard Allen	SOS
Jim Fl	NCAFL

VISITOR REGISTRATION SHEET

Horse Issues

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
CLAUDE E. McKINNEY	NCSU CENTENNIAL CAMPUS
HOWARD HARRELL	N C STATE UNIVERSITY
GEORGE WORSLEY	NC STATE UNIV
Danny Rogers	NCDOT
Roger Bone	Bone & Assoc
Jon Underhill	NCBC
Patricia Bowler	NCACC
Ron Aycock	NCACC
Ed Regan	NCACC
David Simmons	ZDA, PA
John McMillan	Nothing Fulton & Skinner
Tom Dixon	NCDR

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, JUNE 10, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Wednesday, June 10, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Rep. Gray called the meeting to order and introduced the Pages.

HB-1356 ELECTRONIC COMMERCE ACT

This was removed for the agenda for the sponsor.

SB-124 AMEND WHITE GOODS TAX

The Proposed Committee Substitute was adopted for discussion. Rep. C. Wilson explained the PCS. Rep. Wilson also send forth a technical amendment. The vote was taken on the technical amendment and passed. Rep. Nichols questioned the threshold and Rep. Wilson explained. Rep. Hackney questioned the disposal sites and if the money must be used only from white goods. Ms. Cindy Avrette, Research Division, responded to his inquiry. Rep. Hackney then questioned the language of the bill and Mr. Dexter Matthews, Department of Waste Industries, was asked to address members. He explained how the funds were currently used. Rep. Hackney made additional remarks and Rep. Wilson and Mr. Matthews responded to his marks. Rep. Dickson spoke and recommended not changing the language. Rep. Jarrell questions the grants issue. Mr. Matthews explained how they worked. Mr. Ron Aycock, County Commissioners Association spoke in favor of the bill. Rep. Starnes asked how many sites have white goods and Mr. Matthews answered. Rep. Starnes asked for the purpose of the bill and Rep. Wilson explained the surplus on the county level and why this is important legislation that addresses several other concerns.

Rep. Buchanan moved for a favorable report.

Rep. Capps questioned the effective dates in Section 7. Ms. Avrette explained the dates. Rep. Cunningham asked why the collection amount couldn't be reduced. Rep. Wilson explained. Rep. Beall spoke about his county activity by recycling and he supports this bill. Rep. Nesbitt questioned Mr. Aycock on their

position of this bill. Mr. Aycock advised again that they want this program to continue and they support it. Rep. Wright questioned why a section of the original bill was not in the Proposed Committee Substitute. Rep. Wilson explained this to him. Rep. Russell questioned the amount being reduced from $5.00 to $3.00 and Rep. Wilson advised there is still adequate funding with the reduced amount. Rep. Womble questioned the expiration tax of the bill. Rep. Wilson advised this will be addressed again the three years. Rep. Womble spoke again but has concerns about what could happen at the end of the three year period. Rep. Hackney suggested an amendment and asked if Rep. Wilson, the Department of Waste Industries and the County Commissioners Association would support it. Mr. Dexter and Rep. Wilson spoke, then Mr. Aycock spoke on the suggestion so Rep. Hackney made it in the form of an amendment and sent it forth. Rep. Hill spoke in favor of the amendment. The vote was taken on the amendment and it was adopted.

Rep. Luebke again questioned the section of the bill that was not included in the PCS. Rep. Wilson, Ms. Avrette and Mr. Matthews all responded.

Rep. Buchanan adjusted his motion to be the amendment PCS be adopted with a favorable report, as unfavorable to the original bill. Rep. Hackney recommended a language change to coincide with the earlier amendment that was adopted. Ms. Avrette advised this could be handled. The vote was taken and passed.

Rep. McCombs advised his bill HB-1252 - CRIMINAL TAX PENALTY TO HOME COUNTY was ready to be heard since the sub-sub-committee had met and made the necessary adjustments. Chairman Gray announced it would be heard on Thursday.

The meeting adjourned at 9:30 a.m.

Rep. Gray, Chairman

Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

WEDNESDAY, JUNE 10, 1998

8:30 AM ROOM 544-LOB

CALL TO ORDER

BILLS FOR DISCUSSION:

HB-1356 - Electronic Commerce Act	Rep. Reynolds
SB-124 - Amend White Goods Tax	Reps. Wilson & Mitchell

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 124
Finance Committee Substitute Adopted 5/8/97

Short Title: Amend White Goods Tax. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE WHITE GOODS DISPOSAL TAX RATE TO ONE RATE FOR ANY WHITE GOOD REGARDLESS OF WHETHER THE WHITE GOOD CONTAINS CHLOROFLUOROCARBONS, TO EXTEND THE WHITE GOODS DISPOSAL TAX SUNSET, TO PROVIDE THAT WHITE GOODS TAX REVENUE THAT IS NOT NEEDED FOR THE MANAGEMENT OF DISCARDED WHITE GOODS MAY BE USED TO CLEAN UP ILLEGAL DUMP SITES, AND TO ALTER THE DISTRIBUTION OF THE TAX PROCEEDS FROM THIS TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-187.21 reads as rewritten:

"**§ 105-187.21. Tax imposed.**

A privilege tax is imposed on a white goods retailer at a flat rate for each new white good that is sold by the retailer. An excise tax is imposed on a new white good purchased outside the State for storage, use, or consumption in this State. The rate of the privilege tax and the excise tax is ~~five dollars ($5.00) if the new white good does not contain chlorofluorocarbon refrigerants and is ten dollars ($10.00) if the new white good contains chlorofluorocarbon refrigerants.~~ three dollars ($3.00). These taxes are in addition to all other taxes."

Section 2. G.S. 130A-309.82 reads as rewritten:

"**§ 130A-309.82. Use of disposal tax proceeds by counties.**

Article 5C of Chapter 105 of the General Statutes imposes a tax on new white goods to provide funds for the management of discarded white goods. A county ~~may~~

must use the proceeds of the tax distributed to it under that Article ~~only~~ for the management of discarded white goods. If a county has a surplus of tax proceeds after reimbursing its costs of managing discarded white goods, then it may use the remainder of the tax proceeds for the cleanup of unmanaged illegal dump sites."

Section 3. G.S. 130A-309.83 reads as rewritten:

"**§ 130A-309.83. White Goods Management Account.**

The White Goods Management Account is established within the Department. The Account consists of revenue credited to the Account from the proceeds of the white goods disposal tax imposed by Article 5C of Chapter 105 of the General ~~Statutes.~~ Statutes and any revenue credited to the Account as the result of the recovery by the State of part or all of the costs of cleaning up an unmanaged illegal dump site.

The Department shall use revenue in the Account to make grants to units of local government to assist them in managing discarded white ~~goods.~~ goods and cleaning up unmanaged illegal dump sites. The Department must make grants for the management of discarded white goods to all applicants who meet the grant criteria before it makes a grant for cleaning up unmanaged illegal dump sites. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria for a grant to manage discarded white goods shall include the financial ability of a unit to manage white goods, the severity of a unit's white goods management problem, and the effort made by a unit to manage white goods within the resources available to it. The criteria for a grant to clean up an unmanaged illegal dump site shall include the financial ability of the unit to clean up the site and the severity of the problem created by the site.

A unit of local government is not eligible for a grant to manage discarded white goods unless its costs of managing white goods for a six-month period preceding the date the unit files an application for a grant exceeded the amount the unit received during that period from the proceeds of the white goods disposal tax under G.S. 105-187.24. The Department shall determine the six-month period to be used in determining who is eligible for a ~~grant.~~ grant to manage discarded white goods. A grant to a unit to manage discarded white goods may not exceed the unit's unreimbursed cost for the six-month period."

Section 4. G.S. 105-187.24 reads as rewritten:

"**§ 105-187.24. Use of tax proceeds.**

The Secretary shall distribute the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, in accordance with this section. The Secretary may retain the Department's cost of collection, not to exceed two hundred twenty-five thousand dollars ($225,000) a year, as reimbursement to the Department.

Each quarter, the Secretary shall credit ~~five percent (5%)~~ eight percent (8%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty percent (20%) of the net tax proceeds to the White Goods Management Account. The Secretary shall distribute the remaining ~~seventy-five percent (75%)~~ seventy-two percent (72%) of the net tax proceeds among the counties on a per

capita basis according to the most recent annual population estimates certified to the Secretary by the State Planning Officer.

A county may use funds distributed to it under this section only as provided in G.S. 130A-309.82. A county that receives funds under this section and that has an interlocal agreement with another unit of local government under which the other unit provides for the disposal of solid waste for the county must transfer the amount received under this section to that other unit. A unit to which funds are transferred is subject to the same restrictions on use of the funds as the county."

Section 5. G.S. 130A-309.12 reads as rewritten:

"**§ 130A-309.12. Solid Waste Management Trust Fund.**

(a) The Solid Waste Management Trust Fund is created and is to be administered by the Department for the purposes of:

(1) Funding activities of the Department to promote waste reduction and recycling including but not limited to public education programs and technical assistance to units of local government;

(2) Funding research on the solid waste stream in North Carolina;

(3) Funding activities related to the development of secondary materials markets;

(4) Providing funding for demonstration projects as provided by this Part; and

(5) Providing funding for research by The University of North Carolina and independent nonprofit colleges and universities within the State which are accredited by the Southern Association of Colleges and Schools as provided by this Part.

(b) The Solid Waste Management Trust Fund shall consist of the following:

(1) Funds appropriated by the General Assembly.

(2) Contributions and grants from public or private sources.

(3) Ten percent (10%) of the proceeds of the scrap tire disposal tax imposed under Article 5B of Chapter 105 of the General Statutes.

(4) ~~Five percent (5%)~~ Eight percent (8%) of the proceeds of the white goods disposal tax imposed under Article 5C of Chapter 105 of the General Statutes.

(c) The Department shall report annually on or before 1 September to the Environmental Review Commission as to the condition of the Solid Waste Management Trust Fund and as to the use of all funds allocated from the Solid Waste Management Trust Fund."

Section 6. Section 11 of Chapter 471 of the 1993 Session Laws, as amended by Section 15.1(b) of Chapter 769 of the 1993 Session Laws, reads as rewritten:

"Sec. 11. Sections 1 through 5 of this act and this section become effective January 1, 1994. Section 3 of this act expires July 1, ~~1998.~~ 2003. Section 6 of this act becomes effective July 1, 1998. Sections 7, 8, and 9 of this act become effective July 1, 1999.

The repeal of the tax imposed by Section 3 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arose during the time the tax was in effect. The first report submitted by the Department to the Environmental Review Commission under G.S. 130A-309.85, as enacted by this act, shall cover the period from January 1, 1994, to June 30, 1994."

Section 7. Sections 6, 7, 8, and 9 of Chapter 471 of the 1993 Session Laws are repealed.

Section 8. Sections 7 and 8 of this act are effective when this act becomes law. The remaining sections of this act become effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 124
Finance Committee Substitute Adopted 5/8/97
PROPOSED HOUSE COMMITTEE SUBSTITUTE
S124-CSRB-3

Short Title: Amend White Goods Tax. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE WHITE GOODS DISPOSAL TAX RATE TO ONE RATE FOR ANY WHITE GOOD REGARDLESS OF WHETHER THE WHITE GOOD CONTAINS CHLOROFLUOROCARBONS, TO EXTEND THE WHITE GOODS DISPOSAL TAX SUNSET, TO ALTER THE DISTRIBUTION OF THE TAX PROCEEDS FROM THIS TAX, TO CLARIFY HOW THE COUNTIES MAY USE THE TAX PROCEEDS, AND TO LIMIT THE AMOUNT OF SURPLUS A COUNTY MAY ACCUMULATE BY HOLDING FURTHER TAX DISTRIBUTIONS UNTIL THE SURPLUS IS REDUCED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-187.21 reads as rewritten:

"**§ 105-187.21. Tax imposed.**

A privilege tax is imposed on a white goods retailer at a flat rate for each new white good that is sold by the retailer. An excise tax is imposed on a new white good purchased outside the State for storage, use, or consumption in this State. The rate of the privilege tax and the excise tax is ~~five dollars ($5.00) if the new white good does not contain chlorofluorocarbon refrigerants and is ten dollars ($10.00) if the new white good contains chlorofluorocarbon refrigerants.~~ three dollars ($3.00). These taxes are in addition to all other taxes."

Section 2. G.S. 105-187.24 reads as rewritten:

"**§ 105-187.24. Use of tax proceeds.**

The Secretary shall distribute the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, in accordance with this section. The Secretary may retain the Department's cost of collection, not to exceed two hundred twenty-five thousand dollars ($225,000) a year, as reimbursement to the Department.

Each quarter, the Secretary shall credit ~~five percent (5%)~~ eight percent (8%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty percent (20%) of the net tax proceeds to the White Goods Management Account. The Secretary shall distribute the remaining ~~seventy-five percent (75%)~~ seventy-two percent (72%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Planning Officer. The Department shall not distribute the tax proceeds to a county when notified not to do so by the Department of Environment and Natural Resources under G.S. 130A-309.87. If a county is not entitled to a distribution, the proceeds allocated for that county will be credited to the White Goods Management Account.

A county may use funds distributed to it under this section only as provided in G.S. 130A-309.82. A county that receives funds under this section and that has an interlocal agreement with another unit of local government under which the other unit provides for the disposal of solid waste for the county must transfer the amount received under this section to that other unit. A unit to which funds are transferred is subject to the same restrictions on use of the funds as the county."

Section 3. G.S. 130A-309.12 reads as rewritten:

"**§ 130A-309.12. Solid Waste Management Trust Fund.**

(a) The Solid Waste Management Trust Fund is created and is to be administered by the Department for the purposes of:

(1) Funding activities of the Department to promote waste reduction and recycling including but not limited to public education programs and technical assistance to units of local government;

(2) Funding research on the solid waste stream in North Carolina;

(3) Funding activities related to the development of secondary materials markets;

(4) Providing funding for demonstration projects as provided by this Part; and

(5) Providing funding for research by The University of North Carolina and independent nonprofit colleges and universities within the State which are accredited by the Southern Association of Colleges and Schools as provided by this Part.

(b) The Solid Waste Management Trust Fund shall consist of the following:

(1) Funds appropriated by the General Assembly.

(2) Contributions and grants from public or private sources.

(3) Ten percent (10%) of the proceeds of the scrap tire disposal tax imposed under Article 5B of Chapter 105 of the General Statutes.

(4) ~~Five percent (5%)~~ Eight percent (8%) of the proceeds of the white goods disposal tax imposed under Article 5C of Chapter 105 of the General Statutes.

(c) The Department shall report annually on or before 1 September to the Environmental Review Commission as to the condition of the Solid Waste Management Trust Fund and as to the use of all funds allocated from the Solid Waste Management Trust Fund."

Section 4. G.S. 130A-309.82 reads as rewritten:

"**§ 130A-309.82. Use of disposal tax proceeds by counties.**

Article 5C of Chapter 105 of the General Statutes imposes a tax on new white goods to provide funds for the management of discarded white goods. A county ~~may~~ must use the proceeds of the tax distributed to it under that Article ~~only~~ for the management of discarded white goods. The purposes for which a county may use the tax proceeds include, but are not limited to, the following:

(1) Capital improvements for infrastructure to manage discarded white goods, such as concrete pads for loading, equipment essential for moving white goods, storage sheds for equipment essential to white goods disposal management, and freon extraction equipment.

(2) Operating costs associated with managing discarded white goods, such as labor, transportation, and freon extraction.

(3) The clean-up of illegal white goods disposal sites.

A county may not use the tax proceeds for a capital improvement or operating expense that does not directly relate to the management of discarded white goods. If a capital improvement or

operating expense is partially related to the management of discarded white goods, a county may use the tax proceeds to finance a percentage of the costs equal to the percentage of the use of the improvement or expense directly related to the management of discarded white goods."

Section 5. G.S. 130A-309.85 reads as rewritten:

"**§ 130A-309.85. Department to submit annual report on the management of white goods.**

The Department shall report annually to the Environmental Review Commission and to the Revenue Laws Study Committee concerning the management of white goods. The report shall be submitted by ~~1 October~~ February 1 of each year for the fiscal year ending on the preceding ~~30 June.~~ June 30. The report shall include the following information:

(1) The amount of taxes collected and distributed under G.S. 105-187.24 during the period covered by the report.

(2) The cost to each county of managing white goods during the period covered by the report.

(3) The beginning and ending balances of the White Goods Management Account for the period covered by the report and a list of grants made from the Account for the period.

(4) Any other information the Department considers helpful in understanding the problem of managing white goods.

(5) A summary of the information concerning the counties' white goods management programs contained in the counties' Annual Financial Information Report."

Section 6. Chapter 130A is amended by adding a new section to read:

"**§ 130A-309.87. Eligibility for disposal tax proceeds.**

(a) Receipt of Funds. -- A county may not receive a quarterly distribution of the white goods disposal tax proceeds under G.S. 105-187.24 unless the undesignated balance in the county's white goods account at the end of its fiscal year is less than twenty-five percent (25%) of the amount it received during the fiscal year from the white goods disposal tax. Based upon the information in a county's Annual Financial Information Report, the Department must notify the Department of Revenue by March 1 of each year which counties may not receive a distribution of the white goods disposal tax for the current calendar year. The

Department of Revenue will credit the undistributed tax proceeds to the White Goods Management Account.

If the undesignated balance in a county's white goods account subsequently falls below twenty-five percent (25%) of the amount it received from the white goods disposal tax during the preceding fiscal year, the county may submit a statement to the Department, certified by the county finance officer, that the undesignated balance in its white goods account is less than twenty-five percent (25%) of the amount it received from the white goods disposal tax during the preceding fiscal year. Upon receipt of the statement, the Department will notify the Department of Revenue to distribute to the county its quarterly distribution of the white goods disposal tax proceeds. The Department must notify the Department of Revenue of the county's change of status at least 30 days prior to the next quarterly distribution.

(b) Annual Financial Information Report. -- On or before November 1 of each year, a county must submit a copy of its Annual Financial Information Report, prepared in accordance with G.S. 159-33.1, to the Department. The Secretary of the Local Government Commission must require the following information in that report:

(1) The tonnage of white goods scrap metal collected.

(2) The amount of revenue credited to its white goods account. This revenue should include all receipts derived from the white goods disposal tax, the sale of white goods scrap metals and freon, and a grant from the White Goods Management Account.

(3) The expenditures from its white goods account. The expenditures should include operating expenses and capital improvement costs associated with its white goods management program.

(4) The designated and undesignated balance of its white goods account.

(5) A comparison of the undesignated balance of its white goods account at the end of the fiscal year and the amount of white goods disposal tax proceeds it received, or would have received if it had been eligible to receive it under G.S. 130A-390.87, during the fiscal year."

Section 7. Section 11 of Chapter 471 of the 1993 Session Laws, as amended by Section 15.1(b) of Chapter 769 of the 1993 Session Laws, reads as rewritten:

"Sec. 11. Sections 1 through 5 of this act and this section become effective January 1, 1994. Section 3 of this act expires July 1, ~~1998.~~ 2001. Section 6 of this act becomes effective July 1, ~~1998.~~ 2001. Sections 7, 8, and 9 of this act become effective July 1, ~~1999.~~ 2002.

The repeal of the tax imposed by Section 3 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arose during the time the tax was in effect. The first report submitted by the Department to the Environmental Review Commission under G.S. 130A-309.85, as enacted by this act, shall cover the period from January 1, 1994, to June 30, 1994."

Section 8. G.S. 130A-309.87(a), as enacted by this act, becomes effective January 1, 1999, and applies to collections made on or after that date. The remainder of this act becomes effective July 1, 1998.

FISCAL ANALYSIS MEMORANDUM

DATE: June 8, 1998

TO: House Finance Committee

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: S.B. 124 PCS - White Goods

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Extend Sunset	$8,801,596	$9,312,089	$9,852,190	-	-
Reduce Tax*	($4,576,831)	($4,842,286)	($5,123,139)	-	-
Net Tax Change	$4,224,765	$4,468,803	$4,729,051		
*Tax Reduction - Loss by Fund					
SWMTF	($102,099)	($108,020)	($114,285)	-	-
WGMA	($915,366)	($968,457)	($1,024,628)	-	-
Counties	($3,559,366)	($3,765,809)	($3,984,226)	-	-

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: SWMTF - Solid Waste Management Trust Fund
WGMA - White Goods Management Account
County Governments that dispose of white goods

EFFECTIVE DATE: The act becomes effective July 1, 1998 and expires on July 1, 2001.

BILL SUMMARY: This bill reduces the tax on all new white goods to $3.00. It tightens the limitations on how the tax proceeds can be expended by counties and increases the reporting requirements for use of the county funds. The bill extends the sunset on the white goods tax from July 1, 1998 to July 1, 2001. Finally, the bill changes the allocation of tax revenues. The Solid Waste Management Trust Fund (SWMTF) is to receive 8% of the revenue, instead of 5%,

and the county revenue is reduced from 75% to 72%. The percentage of revenue going to the White Goods Management Account (WGMA) does not change.

BACKGROUND: A white good is a domestic or commercial large appliance, such as a refrigerator, a water heater, an air conditioning unit, or a dishwasher. Before 1996 many of these items contained chlorofluorocarbon refrigerants. That refrigerant is now banned by the Environmental Protection Agency and must be removed from appliances before their disposal. The current white goods disposal tax, paid at the point of sale on new goods, is $5.00 if the item does not contain chlorofluorocarbon refrigerants, and $10.00 if item contains those refrigerants.

ASSUMPTIONS AND METHODOLOGY: The tax data used in the analysis was provided by the Department of Revenue Sales and Use Tax Division. The Association of Home Appliance Manufacturers provided information on product sales in the State.

The overall rate decrease is equal to 52%. Of the white goods sold in 1996, 39% of the tax revenue came from items that used refrigerants and the remaining 61% of the revenue came from goods that did not contain refrigerants. The rate on white goods containing refrigerants is decreased by 70% (from $10 to $3) and the rate on the remaining white goods is reduced by 48% (from $5 to $3). The result, as measured in total revenue, is a 52% loss. The annual growth in sales is estimated at 5.8%.

EXPLANATION OF SENATE BILL 124:
Proposed House Committee Substitute
Amend White Goods Tax

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 9, 1998
SPONSOR: Senator Odom

The proposed House Committee Substitute for **Senate Bill 124** changes the tax that is imposed on "white goods" as follows:

1. It extends the sunset on the tax so that the tax expires three years after the current repeal date. Under the bill, the tax expires July 1, 2001. Under current law, the tax will expire July 1, 1998. (Section 7)
2. It reduces the tax on all new white goods to $3.00. Under current law, the tax on new white goods that contain chloroflourocarbons is $10.00 and the tax on those that do not is $5.00. (Section 1)
3. It increases the counties' accountability for revenues and expenditures associated with a white goods management program. The Secretary of the Local Government Commission will require that information concerning a county's white goods management program be included on its Annual Financial Information Report. This report is certified by the county finance officer based upon an independent audit by a certified public accountant. (Section 6)
4. It limits the amount of surplus white goods disposal tax proceeds a county can accumulate. It provides that a county may not receive its quarterly distributions of the white goods disposal tax proceeds unless its undesignated white goods account balance is less than 25% of the amount of tax proceeds the county received for a fiscal year. The undistributed proceeds will be credited to the White Goods Management Account. (Sections 2 and 6)
5. It changes the allocation of the white goods tax revenue by increasing the percentage that goes to the Solid Waste Management Trust Fund (from 5% to 8%) and decreasing the amount that is distributed to counties (from 75% to 72%). (Sections 2 and 3)
6. It clarifies how a county may use the white goods disposal tax proceeds. A county may not use the proceeds for expenses that do not directly relate to the management of discarded white goods. (Section 4)

The white goods tax was imposed effective January 1, 1994. The purpose of the tax was to provide a source of revenue for the proper disposal of discarded white goods. A white good is a domestic or commercial large appliance, such as a refrigerator, a water heater, an air conditioner unit, or a dishwasher. Chlorofluorocarbon refrigerant is a type of gas that must be removed from a white good under federal law. Chlorofluorocarbon refrigerants were banned as of January 1, 1996, by the Environmental Protection Agency.

Under current law, the tax proceeds are distributed quarterly as follows:

(1) 5% to the Solid Waste Management Trust Fund. The money in this Fund is used to fund activities of the Department of Environment, Health, and Natural Resources (DEHNR) to promote waste reduction and recycling, to fund research on the solid waste stream in North Carolina, to fund activities related to the development of secondary materials markets, to fund demonstration projects, and to fund research by in-State colleges and universities.

(2) 20% to the White Goods Management Account. The money in this Account is used to make grants to local governmental units to assist them in managing discarded white goods.

(3) 75% to the 100 counties on a per capita basis to be used only for the management of discarded white goods.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-10-98

S. B. No. 124 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 3, line 41

( ) WHICH CHANGES THE TITLE

by rewriting said lines as follows:

"(3) The clean-up of illegal white goods disposal sites, old illegal disposal sites consisting of more than 50% discarded white goods, or, as to those illegal disposal sites consisting of 50% or less discarded white goods, the clean-up of the discarded white goods portion of the illegal disposal site."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 124

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S124-ARB-1 Page 1 of __

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title []
S124-CSRB-3

Representative Connie Wilson

moves to amend the bill on page 4, lines 37-39, by rewriting the lines to read:
"goods account at the end of its fiscal year is less than the threshold amount. Based upon the";

and on page 5, lines 4-6, by rewriting the lines to read:
"subsequently falls below the threshold amount, the county may submit a statement to the";

and on page 5, lines 9-10, by rewriting the lines to read:
"the threshold amount. Upon";

and on page 5, line 16, by inserting a sentence at the end of that line to read:
"For purposes of this subsection, the term "threshold amount" means twenty-five percent (25%) of the amount of white goods disposal tax proceeds a county received, or would have received if it had been eligible to receive them under G.S. 130A-309.87, during the preceding fiscal year.";

and on page 5, line 39, by deleting "G.S. 130A-390.87" and substituting "G.S. 130A-309.87".

SIGNED Connie Wilson
Amendment Sponsor

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 124

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S124-ARB-1 Page 2 of __

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ___X___ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 124
Finance Committee Substitute Adopted 5/8/97
Proposed House Committee Substitute S124-PCSA863

Short Title: Amend White Goods Tax. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE WHITE GOODS DISPOSAL TAX RATE TO ONE RATE FOR ANY WHITE GOOD REGARDLESS OF WHETHER THE WHITE GOOD CONTAINS CHLOROFLUOROCARBONS, TO EXTEND THE WHITE GOODS DISPOSAL TAX SUNSET, TO ALTER THE DISTRIBUTION OF THE TAX PROCEEDS FROM THIS TAX, TO CLARIFY HOW THE COUNTIES MAY USE THE TAX PROCEEDS, AND TO LIMIT THE AMOUNT OF SURPLUS A COUNTY MAY ACCUMULATE BY HOLDING FURTHER TAX DISTRIBUTIONS UNTIL THE SURPLUS IS REDUCED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-187.21 reads as rewritten:

"**§ 105-187.21. Tax imposed.**

A privilege tax is imposed on a white goods retailer at a flat rate for each new white good that is sold by the retailer. An excise tax is imposed on a new white good purchased outside the State for storage, use, or consumption in this State. The rate of the privilege tax and the excise tax is ~~five dollars ($5.00) if the new white good does not contain chlorofluorocarbon refrigerants and is ten dollars ($10.00) if the new white good contains chlorofluorocarbon refrigerants.~~ three dollars ($3.00). These taxes are in addition to all other taxes."

Section 2. G.S. 105-187.24 reads as rewritten:

"**§ 105-187.24. Use of tax proceeds.**

The Secretary shall distribute the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, in accordance with this section. The Secretary may retain the Department's cost of collection, not to exceed two hundred twenty-five thousand dollars ($225,000) a year, as reimbursement to the Department.

Each quarter, the Secretary shall credit ~~five percent (5%)~~ eight percent (8%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty percent (20%) of the net tax proceeds to the White Goods Management Account. The Secretary shall distribute the remaining ~~seventy-five percent (75%)~~ seventy-two percent (72%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Planning Officer. The Department shall not distribute the tax proceeds to a county when notified not to do so by the Department of Environment and Natural Resources under G.S. 130A-309.87. If a county is not entitled to a distribution, the proceeds allocated for that county will be credited to the White Goods Management Account.

A county may use funds distributed to it under this section only as provided in G.S. 130A-309.82. A county that receives funds under this section and that has an interlocal agreement with another unit of local government under which the other unit provides for the disposal of solid waste for the county must transfer the amount received under this section to that other unit. A unit to which funds are transferred is subject to the same restrictions on use of the funds as the county."

Section 3. G.S. 130A-309.12 reads as rewritten:

"**§ 130A-309.12. Solid Waste Management Trust Fund.**

(a) The Solid Waste Management Trust Fund is created and is to be administered by the Department for the purposes of:

(1) Funding activities of the Department to promote waste reduction and recycling including but not limited to public education programs and technical assistance to units of local government;

(2) Funding research on the solid waste stream in North Carolina;

(3) Funding activities related to the development of secondary materials markets;

(4) Providing funding for demonstration projects as provided by this Part; and

(5) Providing funding for research by The University of North Carolina and independent nonprofit colleges and universities within the State which are accredited by the Southern Association of Colleges and Schools as provided by this Part.

(b) The Solid Waste Management Trust Fund shall consist of the following:

(1) Funds appropriated by the General Assembly.

(2) Contributions and grants from public or private sources.

(3) Ten percent (10%) of the proceeds of the scrap tire disposal tax imposed under Article 5B of Chapter 105 of the General Statutes.

(4) ~~Five percent (5%)~~ Eight percent (8%) of the proceeds of the white goods disposal tax imposed under Article 5C of Chapter 105 of the General Statutes.

(c) The Department shall report annually on or before 1 September to the Environmental Review Commission as to the condition of the Solid Waste Management Trust Fund and as to the use of all funds allocated from the Solid Waste Management Trust Fund."

Section 4. G.S. 130A-309.82 reads as rewritten:

"**§ 130A-309.82. Use of disposal tax proceeds by counties.**

Article 5C of Chapter 105 of the General Statutes imposes a tax on new white goods to provide funds for the management of discarded white goods. A county ~~may~~ must use the proceeds of the tax distributed to it under that Article ~~only~~ for the management of discarded white goods. The purposes for which a county may use the tax proceeds include, but are not limited to, the following:

(1) Capital improvements for infrastructure to manage discarded white goods, such as concrete pads for loading, equipment essential for moving white goods, storage sheds for equipment essential to white goods disposal management, and freon extraction equipment.

(2) Operating costs associated with managing discarded white goods, such as labor, transportation, and freon extraction.

(3) The cleanup of illegal white goods disposal sites, the cleanup of illegal disposal sites consisting of more than fifty percent (50%) discarded white goods, and, as to those illegal disposal sites consisting of fifty percent (50%) or less discarded white goods, the cleanup of the discarded white goods portion of the illegal disposal sites.

Except as provided in subdivision (3) of this section, a county may not use the tax proceeds for a capital improvement or operating expense that does not directly relate to the management of discarded white goods. Except as provided in subdivision (3) of this section, if a capital improvement or operating expense is partially related to the management of discarded white goods, a county may use the tax proceeds to finance a percentage of the costs equal to the percentage of the use of the improvement or expense directly related to the management of discarded white goods."

Section 5. G.S. 130A-309.85 reads as rewritten:

"**§ 130A-309.85. Department to submit annual report on the management of white goods.**

The Department shall report annually to the Environmental Review Commission and to the Revenue Laws Study Committee concerning the management of white goods. The report shall be submitted by ~~1 October~~ February 1 of each year for the fiscal year ending on the preceding ~~30 June.~~ June 30. The report shall include the following information:

(1) The amount of taxes collected and distributed under G.S. 105-187.24 during the period covered by the report.

(2) The cost to each county of managing white goods during the period covered by the report.
(3) The beginning and ending balances of the White Goods Management Account for the period covered by the report and a list of grants made from the Account for the period.
(4) Any other information the Department considers helpful in understanding the problem of managing white goods.
(5) A summary of the information concerning the counties' white goods management programs contained in the counties' Annual Financial Information Report."

Section 6. Part 2D of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-309.87. Eligibility for disposal tax proceeds.**

(a) Receipt of Funds. -- A county may not receive a quarterly distribution of the white goods disposal tax proceeds under G.S. 105-187.24 unless the undesignated balance in the county's white goods account at the end of its fiscal year is less than the threshold amount. Based upon the information in a county's Annual Financial Information Report, the Department must notify the Department of Revenue by March 1 of each year which counties may not receive a distribution of the white goods disposal tax for the current calendar year. The Department of Revenue will credit the undistributed tax proceeds to the White Goods Management Account.

If the undesignated balance in a county's white goods account subsequently falls below the threshold amount, the county may submit a statement to the Department, certified by the county finance officer, that the undesignated balance in its white goods account is less than the threshold amount. Upon receipt of the statement, the Department will notify the Department of Revenue to distribute to the county its quarterly distribution of the white goods disposal tax proceeds. The Department must notify the Department of Revenue of the county's change of status at least 30 days prior to the next quarterly distribution.

For the purposes of this subsection, the term "threshold amount" means twenty-five percent (25%) of the amount of white goods disposal tax proceeds a county received, or would have received if it had been eligible to receive them under G.S. 130A-309.87, during the preceding fiscal year.

(b) Annual Financial Information Report. -- On or before November 1 of each year, a county must submit a copy of its Annual Financial Information Report, prepared in accordance with G.S. 159-33.1, to the Department. The Secretary of the Local Government Commission must require the following information in that report:

(1) The tonnage of white goods scrap metal collected.
(2) The amount of revenue credited to its white goods account. This revenue should include all receipts derived from the white goods disposal tax, the sale of white goods scrap metals and freon, and a grant from the White Goods Management Account.

(3) The expenditures from its white goods account. The expenditures should include operating expenses and capital improvement costs associated with its white goods management program.

(4) The designated and undesignated balance of its white goods account.

(5) A comparison of the undesignated balance of its white goods account at the end of the fiscal year and the amount of white goods disposal tax proceeds it received, or would have received if it had been eligible to receive it under G.S. 130A-309.87, during the fiscal year."

Section 7. Section 11 of Chapter 471 of the 1993 Session Laws, as amended by Section 15.1(b) of Chapter 769 of the 1993 Session Laws, reads as rewritten:

"Sec. 11. Sections 1 through 5 of this act and this section become effective January 1, 1994. Section 3 of this act expires July 1, ~~1998.~~ 2001. Section 6 of this act becomes effective July 1, ~~1998.~~ 2001. Sections 7, 8, and 9 of this act become effective July 1, ~~1999.~~ 2002.

The repeal of the tax imposed by Section 3 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arose during the time the tax was in effect. The first report submitted by the Department to the Environmental Review Commission under G.S. 130A-309.85, as enacted by this act, shall cover the period from January 1, 1994, to June 30, 1994."

Section 8. G.S. 130A-309.87(a), as enacted by this act, becomes effective January 1, 1999, and applies to collections made on or after that date. The remainder of this act becomes effective July 1, 1998.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative(s) **Gray, C. Wilson, Dickson, and Brawley** for the Committee on **Finance.**

---

x Committee Substitute for

S.B. 124 A BILL TO BE ENTITLED AN ACT TO REDUCE THE WHITE GOODS DISPOSAL TAX RATE TO ONE RATE FOR ANY WHITE GOOD REGARDLESS OF WHETHER THE WHITE GOOD CONTAINS CHLOROFLUOROCARBONS, TO EXTEND THE WHITE GOODS DISPOSAL TAX SUNSET, TO PROVIDE THAT WHITE GOODS TAX REVENUE THAT IS NOT NEEDED FOR THE MANAGEMENT OF DISCARDED WHITE GOODS MAY BE USED TO CLEAN UP ILLEGAL DUMP SITES, AND TO ALTER THE DISTRIBUTION OF THE TAX PROCEEDS FROM THIS TAX.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

x With a favorable report as to House committee substitute bill x 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.

☐

VISITOR REGISTRATION SHEET

House Finance — June 10, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bernard Allen	SOS
[illegible]	ENR - Solid Waste Section
Rick Love	WCDES
Joe Wiseman	Solid Waste Assoc. of NA (SWANA)
Wade Hyatt	CPSL
Patti Stowell	DOR
Charles Collins	"
Anna Pope	"
Doug Rogers	NCDOT
Eric Lawrence	Solid Waste Section
Heather Field	OSHA
Paul Lawler	Lawler Consulting

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Scott Mouw	NC DPPEA / DENR
Stacey Slaughter	Legislative Intern
PERRI MORGAN	NFIB
Alice Garland	Electricities
R Rogers	FNR
Kelli Kuhlman	DuPont

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
BILL SLOGGIN	NC BAR ASSOC
VL McBride	NCDD
B Godwin	OSBM
JW Bode	Bode Call & Stroupe
Jim Anthwell	CPA
Natalie Haskins	Charlotte Chamber
FRAN PRESS	NCRMA
Jim Black	NC AFL
Andy Romanet	N.C. L.M.
R. Paul Wilms	NCHBA
DM McGuire	NC Dept of Commerce / ITS
Jim Hickman	NC - DPPEA

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, JUNE 9, 1998

9:00 A.M. ROOM 544-LOB

The House Committee on Finance met on Tuesday, June 9, 1998, at 9:00 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Rep. C. Wilson called the meeting to order and introduced the Pages.

HB-1356 ELECTRONIC COMMERCE ACT

Rep. D. Reynolds explained the bill and gave a demonstration. Mr. Scott Templeton, Deputy Secretary of State, spoke in favor of the bill. Rep. Goodwin inquired of the NC Bar Association and Mr. Bill Scoggin addressed members. He advised that they had no position on this at the current time but there had been a lot of interest. Rep. Goodwin continued with questions/comments and Rep. Reynolds and Mr. Templeton responded. Rep. Hackney had questions regarding private companies not having used this before State agencies. Mr. Jody Ziegler, Information Systems Division, addressed this. Rep. Hackney continued with concerns and Rep. Reynolds responded. Mr. Templeton and Mr. Ziegler also made additional comments. Rep. Hensley questioned criminal and civil penalties. Rep. Reynolds and Ms. Templeton replied. Rep. Miller had a series of questions to which Rep. Reynolds, Mr. Ziegler and Mr. Templeton answered.

Time expired and Chairman Wilson announced this would be continued at the next meeting, Wednesday, June 10th at 8:30.

Meeting adjourned at 9:55.

Connie Wilson
Rep. C. Wilson, Chairman

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

COMMITTEE ON FINANCE

TUESDAY, JUNE 9, 1998

9:00 A.M. ROOM 544-LOB

CALL TO ORDER:

Rep. Gray

BILLS FOR DISCUSSION:

HB-1356 - Electronic Commerce Act
Rep. Reynolds

ADJOURNMENT

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

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.

The General Assembly of North Carolina enacts:

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

"ARTICLE 11A.

"Electronic Commerce in Government.

"**§ 66-58.1. Title; purpose.**

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

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

"**§ 66-58.2. Definitions.**

The following definitions apply in this Article:

(1) 'Certification authority' means a person authorized by the Secretary of State to facilitate electronic commerce by vouching for the connection between a person and that person's electronic signature.

(2) 'Electronic signature' means any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature.

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

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

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

(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 pursuant to this Article.

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

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

"**§ 66-58.4. Rulemaking.**

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

(1) Definitions, including but not limited to more technical definitions of 'certification authority' and 'electronic signature';

(2) The creation, accreditation, licensing, operation, regulation, and sanctioning of certification authorities;

(3) The imposition of licensing and renewal fees in amounts reasonably related to the cost of administering this Article; and

(4) The imposition of civil monetary penalties for noncompliance with this Article or the rules promulgated thereunder.

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

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

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

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

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

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

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

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

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

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

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

"**§ 66-58.7. Exemptions.**

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1356

SHORT TITLE: Electronic Commerce Act

SPONSOR(S): Representatives Reynolds, Baker, Brawley, Clary, Cole, Dickson, Earle, Eddins, Gray, Hurley, McComas, Rayfield, Sexton, Shubert, Tolson, Weatherly, and G. Wilson

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
EXPENDITURES	$75,000	$75,000	$75,000	$75,000	$75,000

POSITIONS: 1

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State

EFFECTIVE DATE: Upon Passage.

BILL SUMMARY:
Amends Section 1, Chapter 66 of the General Statutes by adding Article 11A. The new Article facilitates electronic commerce with and by public entities of the State of North Carolina by recognizing the validity of electronic signatures. Article 11A further authorizes the Secretary of State to regulate electronic signatures and certification authorities, and to assess a civil penalty (up to $100,000) against any person who violates a provision of the Article.

ASSUMPTIONS AND METHODOLOGY:
The bill requires the Department of the Secretary of State to perform a new regulatory function in a fluid and relatively complex technological milieu. The Department of the Secretary of State requests an additional position to perform the work required by the new function. The function

requires a blend of legal/regulatory and technical skills. The individual selected for the position would be required to participate in establishing rules for the use of electronic signatures. Further, the individual would be required to evaluate and monitor certification authorities. The Department requests $75,000 for the new position.

Public-sector experience with the use of electronic signatures remains limited. As a result, a reliable estimate of the potential revenue from penalties assessed (as authorized by this bill) does not exist at this time.

TECHNICAL CONSIDERATIONS:
None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Dwayne Pinkney
APPROVED BY:
DATE: June 8, 1998

EXPLANATION OF HOUSE BILL 1356:
Electronic Commerce Act

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 8, 1998
SPONSOR: Representative Reynolds

House Bill 1356 enacts a new article in the Commerce and Business Chapter of the General Statutes called the Electronic Commerce Act, effective when it becomes law. House Bill 1356 was recommended by the Legislative Research Commission Committee on Information and Technology, and has been given a favorable report in House Judiciary I.

The purpose of this Act is to authorize the use and acceptance of electronic signatures by all State agencies, boards, commissions or institutions and by local political subdivisions including cities, counties, school districts or public service districts, when one of these public entities is a party to a contract, transaction, or filing. An "electronic signature" is defined as "any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature." An electronic signature is valid if the public entity requesting or requiring the signature accepts electronic signatures and if the signature meets the following requirements:

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

The Act gives the Secretary of State authority to promulgate rules to carry out 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 rules must be adopted by October 30, 1998, and at least one public hearing is required before their adoption. The 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 Act authorizes the Secretary of State to assess a civil penalty of not more than $100,000 against a person who violates the Act or adopted rule. The civil penalties are deposited in the General Fund. The courts also have the authority and jurisdiction to enjoin or restrain violations of the Act.

VISITOR REGISTRATION SHEET

House Finance — June 9, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Dave Updike	CP&L
Bob Berry	Capital Group
Ann Case	NCRMA
John Poliniako	AT&T
Bill Scoggin	NC Bus Assoc.
Andy Ellen	NCRMA
Leslie Bonacorsa	NCCBE
P Gwin	OSBM
Fran Rossi	NCRMA
Natalie Hopkins	Charlotte Chamber
L. Rogers	ENR
Scott Templeton	Ins State

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bruce Gamm	Dept of Secretary of State
Bernard Allen	SOS
Heather Card	OSA
Paul Stock	NC Bankers Assn
Matt Osborne	AOC
Stacey Slaughter	Legislative Intern
Carrie Atkins	Intern
Mike Carnes	NCAB34
Patti Stowell	DOR
Charles Collins	17
Anna Pope	11
Henry Bontayn	

VISITOR REGISTRATION SHEET

Horse Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Amy Fallbright	Hunton & Williams
Denny McGuire	NC Dept of Commerce/ITS
LAURA DELAPP	REP. ALDRIDGE - INTERN
A. Bostwick	[illegible]
[illegible]	Poyner & Spruill
[illegible]	BCBSF
David Simmons	ZDA, PA
Tony Osborne	Rowan County Clerk of Court
[illegible]	UNC GA
William Riddick	DOR

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Amy Jo Bain	Smith Anderson
John Cyrus	N.C. State Grange
Andy Romanet	N.C.L.M.
Mitchell Setzer Jr	Smith Setzer & Sons, Catawba, N.C
Don Hunt	Smith Anderson
Gary Harris	NCPMA

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, JUNE 3, 1998

8:30 A.M. ROOM-544

The House Committee on Finance met on Wednesday, June 3, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Rep. Brawley called the meeting to order and introduced the Pages. He also announced the members who are assigned to the sub-sub-committee for HB-1252-Criminal Tax Penalty to Home County. They are, chairman, McCombs, Nesbitt, Cunningham, Hensley and Hill.

HB-1318 LIMIT NONRESIDENT WITHHOLDING

This bill had been carried over from the previous meeting and Rep. Neely gave a brief overview again for members. Rep. Baddour asked about a higher threshold and Rep. Neely responded. Rep. Womble asked if there was any opposition and if so, could they address the committee. Chairman Brawley announced that everyone would be allowed to speak. Ms. Leslie Bevacqua, NC Center for Business and Industry, spoke in support of the bill. Mr. Mike Carpenter, NC Home Builders Association, also spoke in favor. Rep. Gamble questioned the word "celebrity" be added. Rep. Neely explained why that word was not used. Rep. Gamble then questioned international entertainers and Rep. Neely responded. Rep. Cole questioned the Department of Revenue collecting the tax. Ms. Sabre Fairies, Assistant Secretary, Department of Revenue, addressed his concerns for tracking the collection of this tax. Rep. Russell question filings by private contractors and Mr. Richard Bostic, Fiscal Research Division, responded to his concerns. Rep. Neely and Ms. Faires spoke again regarding private contractors who do not file returns.

Rep. Hackney sent forth an amendment and Chairman Brawley read it. Rep. Neely spoke in favor of the amendment. Rep. Hackney urged adoption. The vote was taken and the amendment was adopted.

Rep. Goodwin and Rep. Womble spoke. Ms. Faires and Mr. Bostic addressed their concerns. Rep. Wilson moved for favorable report, unfavorable as to original bill. Rep. Hensley, Rep. Cole, Rep.Luebke, Rep. Howard and Rep. Dickson spoke on the bill. The vote was taken and adopted.

HB-1374 - PROPERTY TAX MATTERS

Rep. Neely explained the bill. Ms. Sabre Fairies, DOR, advised that the Department was neutral on this bill. Rep. Capps moved for a favorable report. The vote was taken and passed.

HB-1320 - NO TAX ON MOVIES

Rep. Cansler reminded members this was carried over from the May 28th meeting and gave a brief update. Rep. Buchanan moved for a favorable report. Rep. Berry requested that DOR provide her with their written interpretation on this issue. Chairman Brawley asked the DOR representative to comply with her request. The vote was taken and passed.

HB-1367 SALES TAX CHANGES

Rep. Hill explained that this was a result of the Revenue Laws Study Committee. Ms. Sabre Fairies advised that the Department of Revenue supports this legislation. Rep. Dickson moved for a favorable report. Rep. Decker questioned the amount of threshold and who determined the amount. Ms. Fairies responded. Rep. Cunningham spoke in favor of the bill. Rep. Eddins questioned flea markets and specialty markets. Ms. Cindy Avrette, Research Division advised this is confirmation of the General Statute. The vote was taken and given a favorable report.

HB-1422 - MAKE CREDITS CONSTITUTIONAL

Rep. Wilson explained. Rep. Womble asked staff for an additional explanation. Ms. Martha Walston, Fiscal Research Division, responded to his request. Rep. Womble then moved for a favorable report. Rep. Russell asked about child care for boarder counties and Rep. Wilson replied. The vote was taken and given a favorable report.

Chairman Brawley announced the members of the sub-sub-committee again for HB-1252.

The meeting adjourned at 9:55.

Rep. R. Brawley, Chairman

Cindy Brooks, Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

Wednesday, June 3, 1998

8:30 a.m. Room 544-LOB

CALL TO ORDER

Rep. Brawley

BILLS FOR DISCUSSION:

HB-1318 - Limit Nonresident Withholding	Rep. Neely
HB-1320 - No Tax on Movies	Rep. Cansler
HB-1367 - Sales Tax Changes	Rep. Hill
HB-1374 - Property Tax Matters	Rep. Neely
HB-1422 - Make Credits Constitutional	Rep. Wilson

ADJOURNMENT:

and withhold from compensation paid to a contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary."

Section 4. This act is effective retroactively as of January 1, 1998. Notwithstanding Sections 1, 2, and 3 of this act, any tax withheld under G.S. 105-163.3 may be repaid to the person from whom the tax was withheld only as provided in G.S. 105-163.3(f).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1318

Short Title: Limit Nonresident Withholding. (Public)

Sponsors: Representatives Neely, Brawley, Cansler, Capps, Gray, Hill, Ramsey, C. Wilson; and Hurley.

Referred to: Finance.

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE NONRESIDENT WITHHOLDING REQUIREMENT TO ATHLETES AND ENTERTAINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.1(2) reads as rewritten:

"(2) Contractor. -- Either of the following:

a. A nonresident individual who performs ~~personal services~~ in this State for compensation other than ~~wages.~~ wages any personal services in connection with a performance, an entertainment, an athletic event, or the creation of a film or television program.

b. A nonresident entity that provides for the performance ~~of the following personal services~~ in this State for ~~compensation: services~~ compensation of any personal services in connection with a performance, an entertainment, an athletic event, or the creation of a film or television ~~program, or the construction or repair of a building or highway.~~ program."

Section 2. Section 4 of S.L. 1997-109 is repealed.

Section 3. This act is effective retroactively as of January 1, 1998. Notwithstanding Sections 1 and 2 of this act, any tax withheld under G.S. 105-163.3 may be repaid to the person from whom the tax was withheld only as provided in G.S. 105-163.3(f).

EXPLANATION OF HOUSE BILL 1318:
Limit Nonresident Withholding

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 28, 1998
SPONSOR: Representatives Neely, Brawley, Cansler, Capps, Gray, Hill, Ramsey, C.Wilson; and Hurley.

House Bill 1318 is a recommendation of the Revenue Laws Study Committee and would limit the withholding requirement for payments to nonresident contractors, so that it would apply only to payments to contractors doing business as athletes and entertainers. It would be effective retroactively as of January 1, 1998.

The 1997 General Assembly enacted S.L. 1997-109 to require withholding from compensation paid to nonresident individuals and nonresident entities for personal services performed in North Carolina. The nonresident withholding requirement was suggested by the Department of Revenue and recommended to the 1997 General Assembly by the Revenue Laws Study Committee. The withholding requirement was phased in as follows. Beginning January 1, 1998, it applied to payments to individuals for any personal services and payments to entities for services relating to entertainment, athletic events, and construction. The withholding requirement was to be expanded to payments to entities for all personal services effective January 1, 1999.

After S.L. 1997-109 became law, legislators, staff, and the Department of Revenue were contacted by businesses that were required to withhold from their payments for personal services. These businesses stated that the withholding requirement would create an expensive, time-consuming burden on them. They would have to reprogram their accounting software, examine invoices manually, and make difficult judgment calls regarding where services were performed. Large, multistate corporations in particular claimed that the new law would be burdensome. In response to these concerns, House Bill 1318 would repeal nearly the entire withholding requirement. The only part that would be retained is the requirement to withhold from payments for services relating to entertainment and athletic events.

The rollback of the withholding requirement would become effective retroactively as of January 1, 1998. Anyone who had been complying with the law by withholding for services other than those performed by athletes and entertainers could choose to refund the withheld taxes only if the taxes had not yet been paid into the Department of Revenue. All taxpayers who had taxes

withheld from their payments will receive a credit for the withheld taxes when they file their income tax return.

The rationale for limiting the withholding requirement to athletes and entertainers is that athletic and entertainment events can be easily identified by those required to withhold, the entire performance is clearly taxable to the state where it occurs, and, because of the large sums often involved, the administrative burden of withholding is small compared to the benefit the State receives. For other personal services performed by nonresidents, the burden of compliance outweighs the benefit because the services are less easily identified and may be performed partly in this state and partly in another state. For those, such as large, multistate corporations, who deal with a myriad of contractors for goods and services throughout the nation, the burden can be significant.

Many nonresidents who derive income from North Carolina do not pay the North Carolina tax due on this income. This problem is particularly troublesome with respect to single event performers such as athletes or entertainers who may be paid large amounts for their work in North Carolina. It is difficult, expensive, and inefficient for the Department of Revenue to trace and pursue these nonresidents who do not pay the tax they owe. The 1997 act imposed the withholding requirement to address this problem.

The 1997 act requires a person or entity who, in the course of a trade or business, pays a nonresident more than $600 for personal services in this State to withhold 4% of the payment and deposit the withheld taxes with the Department of Revenue. The withholding agent must register with the Department of Revenue. The withheld taxes are due by the last day of the first month after the end of the calendar quarter in which the withholding agent paid the nonresident. As is the case with employers who withhold from employees' wages, the withholding agent is required to give each nonresident a statement similar to a W-2 form in January and to provide a compilation of these statements to the Department of Revenue. Filing these documents relieves the agent of the existing information reporting requirement of G.S. 105-154.

The withheld taxes are credited to the nonresident individual or entity from which they were withheld. If the entity is a pass-through entity such as a partnership, Subchapter S corporation, or limited liability company, the credit will pass through to the partners or other owners of the entity. The nonresident receives credit for the withheld taxes by filing a North Carolina income tax return; any excess will be refunded to the taxpayer.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 1318 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

(Rep.) Hackney
Sen.)

moves to amend the bill on page 1, line 10,

by inserting after the word "event," the words "a speech," ;

and on page 1, line 17, by deleting "or" and substituting "a speech, or".

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance.**

☐ Committee Substitute for
H.B. 1318 A BILL TO BE ENTITLED AN ACT TO LIMIT THE NONRESIDENT WITHHOLDING REQUIREMENT TO ATHLETES AND ENTERTAINERS.

☐ 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 1320

Short Title: Tax on Movies. (Public)

Sponsors: Representatives Cansler, Brawley, Capps, Gray, Hill, Neely, Ramsey, C. Wilson; Esposito and Starnes.

Referred to: Finance.

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE STATE PRIVILEGE TAX ON GROSS RECEIPTS FROM MOTION PICTURE SHOWS.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-38.1. Amusements - Motion picture shows.**

(a) Tax. -- A privilege tax at the rate of one percent (1%) is imposed on the gross receipts of a person who is engaged in the business of operating a motion picture show for which an admission is charged. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month. If a person offers an entertainment or amusement that includes both a motion picture taxable under this section and an entertainment or amusement taxable under G.S. 105-37.1 or G.S. 105-38, the tax in G.S. 105-37.1 or G.S. 105-38, as appropriate, applies to the entire gross receipts and the tax levied in this section does not apply.

(b) Exemption. -- Gross receipts from a motion picture show promoted and managed by a qualifying corporation that operates a center for the performing and visual arts is exempt from the tax imposed under this section if the motion picture is shown at the center and if the showing of motion pictures is not the primary purpose of the center. As used in this subsection, 'qualifying corporation' and 'center for the performing and visual arts' have the same meaning as in G.S. 105-37.1(a)."

Section 2. This act becomes effective October 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1320 (First Edition)

SHORT TITLE: Tax on Movies

SPONSOR(S): Representative Cansler, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	$1,525,657	$2,118,498	$2,225,021	$2,336,521	$2,452,998

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: October 1, 1998

BILL SUMMARY: The bill imposes a one percent gross receipts tax on motion picture shows instead of the three percent tax charged other entertainment or amusement.

BACKGROUND: When the privilege tax on motion picture shows was repealed on July 1, 1997, movies then became subject to the 3% gross receipts tax charged amusements and entertainment. However, the Department of Revenue chose not to assess this tax in FY 97-98 until the General Assembly clarified that the tax should be collected. The Department's uncertainty arose from the absence of debate by the 1996 General Assembly on the issue of imposing a gross receipt tax on movies.

ASSUMPTIONS AND METHODOLOGY:
A 1% gross receipts tax on movie admissions would generate approximately $1.5 million in General Fund revenue in FY 1998-99 if enacted on October 1, 1998. The estimate of gross receipts generated by North Carolina movie theaters in 1996 is based on data from the Motion Pictures Association of America. Nationwide, the box office gross was $5.9 billion on 1.3 billion tickets sold. The average admission price at the 29,690 movie screens across the country was $4.42. The average gross revenue per screen in 1996 was $199,107. The National

Association of Theater Owners reported 897 movie screens in North Carolina in 1996. Assuming NC theater gross revenues equal the national average, the 897 Tarheel screens produced $178.6 million in revenues in 1996. If a 1% gross receipts tax were applied, the state would have earned $1.78 million in taxes in 1996.

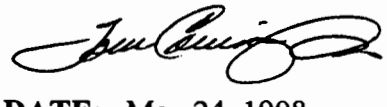
The number of NC screens has grown 5% a year since 1992, but gross revenue per screen has risen and fallen over the last five years. For estimating purposes, it is assumed that the number of movie screens will increase 5% a year, but there will be no increase in gross revenue per screen.

	NC Screens	Gross per screen	Gross revenue	1% tax
1996	897	$199,107	$ 178,598,979	$ 1,785,990
1997	942	$199,107	$ 187,558,794	$ 1,875,588
1998	989	$199,107	$ 196,916,823	$ 1,969,168
1999	1,038	$199,107	$ 206,673,066	$ 2,066,731
2000	1,090	$199,107	$ 217,026,630	$ 2,170,266
2001	1,145	$199,107	$ 227,977,515	$ 2,279,775
2002	1,202	$199,107	$ 239,326,614	$ 2,393,266
2003	1,262	$199,107	$ 251,273,034	$ 2,512,730

The chart below assumes an October 1, 1998 effective date for FY 1998-99. The remaining years are adjusted for fiscal years by taking half of one calendar year plus half of the next calendar year.

Fiscal Year	Revenue
1998-99	$ 1,525,657
1999-00	$ 2,118,498
2000-01	$ 2,225,021
2001-02	$ 2,336,521
2002-03	$ 2,452,998

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:



DATE: May 24, 1998

EXPLANATION OF HOUSE BILL 1320:
Tax on Movies

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 25, 1998
SPONSOR: Representatives Cansler, Brawley, Capps, Gray, Hill, Neely, Ramsey, C.Wilson, Esposito and Starnes.

House Bill 1320 is a recommendation of the Revenue Laws Study Committee and reduces the current 3% gross receipts tax on motion pictures to 1%, effective October 1, 1998. The Bill also clarifies that if a taxpayer offers an entertainment or amusement that includes both a motion picture and an entertainment or amusement that is subject to the 3% gross receipts tax, then the higher rate applies. The October 1, 1998, effective date would give the Department of Revenue time to print the forms and identify taxpayers. Sales tax would continue to be assessed on food and drink sold at motion picture shows.

The Bill clarifies the exemption of motion pictures that are shown at a center for the performing and visual arts that is promoted and managed by an organization organized for religious, charitable, scientific, literary, or educational purposes. The showing of the motion picture show may not be the primary purpose of the center. This exemption was set out in the privilege license statute on movies that was repealed , effective July 1, 1997.

History

The gross receipts tax on motion picture shows was first codified in 1939. The rate of this tax was the same as the sales tax rate. There was also an annual license tax assessed against motion picture shows, and this license tax was applied as a credit upon or advance payment of the gross receipts tax.

In 1943, the General Assembly repealed the gross receipts tax on motion picture shows, and assessed this tax only on other forms of entertainment not otherwise taxed or specifically exempted. The annual license tax continued to be imposed. In 1949, the General Assembly enacted a new statute, G.S. 105-37.1, that assessed an annual license tax and a gross receipts tax on amusements not otherwise taxed or specifically exempted. Since motion picture shows were paying a license tax, they were not subject to G.S. 105-37.1. In 1949, the General Assembly first taxed operating outdoor and drive-in motion picture shows. The tax was based upon population of the town and car capacity. In 1989, the General Assembly amended the privilege license tax on drive-ins by doing away

with the tax rate based upon population and car capacity and, instead, assessing a $100 privilege license tax.

During the Second Extra Session of the 1996 Session, a number of State privilege license taxes were repealed, including the privilege taxes on motion picture shows. The Revenue Laws Study Committee had recommended to the 1995 General Assembly that most of the State privilege license taxes imposed under Article 2 of Chapter 105 of the General Statutes be repealed, effective July 1, 1997. The State privilege license taxes on motion picture shows that were repealed were the following:

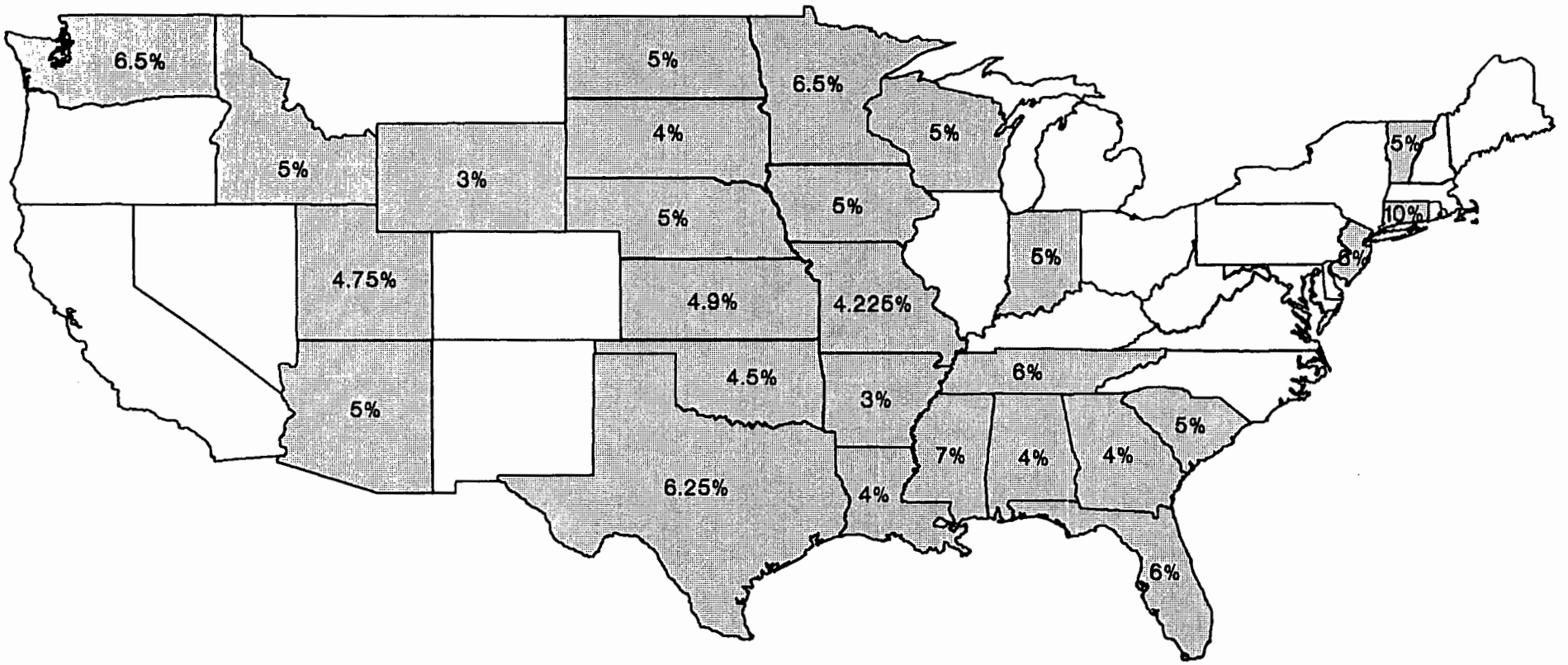
- G.S. 105-36 - Required those engaged in the business of manufacturing, selling, leasing, furnishing and/or distributing films which an admission fee was charged to apply for a privilege license and pay a tax thereon of $625 a year.
- G.S. 105-36.1 - Required those engaged in the business of operating an outdoor or drive-in moving picture show for compensation to apply for a privilege license and a pay a tax thereon of $100 a year.
- G.S. 105-37 - Required those engaged in the business of operating a moving picture show for compensation to apply for a license and pay $200 for each room, hall, or tent used. Only half the tax was required if the motion picture show operated three days or less each week.

When the foregoing statutes were repealed, effective July 1, 1997, motion picture shows fell into the category of amusements not otherwise taxed as set out in G.S. 105-37.1 and, therefore, subject to the 3% gross receipts tax and the $50.00 annual license tax assessed in that statute. However, the Department of Revenue did not begin assessing motion picture shows a gross receipts tax when the privilege license taxes were repealed. The Department believed that when the General Assembly repealed these license taxes, it did not intend to assess any tax on motion picture shows. During the 1996 Session, there appears to have been no discussion of a gross receipts tax on theaters, if the privilege tax was repealed.

The Commerce Clearing House State Tax Guide shows that 27 states tax movie admissions in one fashion or another. (see attached map). Twenty-one states simply apply their sales tax to theater admissions. Alabama and Arkansas have a specific gross receipts tax on movie admissions, while Connecticut and South Carolina have a general admissions tax. Arizona has a transaction privilege tax on theaters and Indiana has a gross income tax on theaters. Twenty-five of these twenty-seven states have movie taxes higher than North Carolina's 3% gross receipts tax. Eleven of the states that tax movie admissions are members of the Southern Legislative Conference.

Staff's research also found that North Carolina's policy of taxing movie concessions is consistent with other states and the District of Columbia.

STATE TAX ON MOVIE ADMISSIONS



Source: CCH (Commerce Clearing House Inc.) State Tax Guide

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
H.B. 1320 A BILL TO BE ENTITLED AN ACT TO REDUCE THE STATE PRIVILEGE TAX ON GROSS RECIEPTS FROM MOTION PICTURE SHOWS.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1367

Short Title: Sales Tax Changes. (Public)

Sponsors: Representatives Hill, Brawley, Cansler, Capps, Gray, Neely, Ramsey, C. Wilson; Allred, Church, Davis, Shubert, Warner, and Yongue.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO RAISE THE SALES TAX QUARTERLY THRESHOLD AND TO REPEAL THE ANNUAL WHOLESALE SALES TAX LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16(b) reads as rewritten:

"(b) General Reporting Periods. -- Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars ($20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars ($20,000) each month to file a return on a semimonthly basis. In determining the amount of tax

due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount ~~he~~ the taxpayer remitted with ~~his~~ the estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed."

Section 2. Part 2 of Division II of Article 5 of Chapter 105 of the General Statutes is repealed.

Section 3. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- ~~Any person who engages in any business for which a privilege tax is imposed by this Article shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business.~~

~~A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of eighteen months, the license holder files no return or files returns showing no sales.~~

~~A retailer who sells tangible personal property at a flea market shall conspicuously display the retailer's sales tax license when making sales at the flea market.~~

Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a

certificate of registration, a person must register with the Department and pay fifteen dollars ($15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 4. G.S. 105-164.6(f) reads as rewritten:

"(f) ~~Every retailer engaged in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business. A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of 18 months, the license holder files no return or files returns showing no sales.~~

Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department and pay fifteen dollars ($15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 5. G.S. 105-164.4(a)(4b) reads as rewritten:

"(4b) A person who sells tangible personal property at a ~~flea~~ specialty market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the ~~flea~~ specialty market. ~~A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term "flea market" means a place where space is rented to a person for the purpose of selling tangible personal property.~~ The term "specialty market" has the same meaning as defined in G.S. 66-250."

Section 6. G.S. 66-252 reads as rewritten:

"**§ 66-252. Display and possession of ~~retail sales tax license.~~ certificate of registration.**

(a) When Required. -- A person who sells tangible personal property at a specialty market, other than the person's own household personal property, is considered a retailer under G.S. 105-164.4 and must obtain a certificate of registration from the Department of Revenue before the person may engage in business. An itinerant merchant must keep the merchant's ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler must carry the peddler's ~~retail sales tax license~~ certificate of registration when the peddler offers goods for sale and must produce the ~~license~~ certificate upon the request of any customer, State or local revenue agent, or law enforcement agent. A specialty market vendor must keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator must have its ~~retail sales tax license,~~ certificate of registration, if any, available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State or local revenue agent, or law enforcement agent.

(b) Compliance. -- The requirement that a ~~retail sales tax license~~ certificate of registration be displayed is satisfied if the vendor displays either of the following:

(1) A copy of the ~~license.~~ certificate.

(2) Evidence that the ~~license~~ certificate has been applied for and the applicable ~~license~~ registration fee has been paid within 30 days before the date the ~~license~~ certificate was required to be displayed."

Section 7. G.S. 66-255 reads as rewritten:

"**§ 66-255. Specialty market registration list.**

A specialty market operator must maintain a daily registration list of all specialty market vendors selling or offering goods for sale at the specialty market. The registration list must clearly and legibly show each specialty market vendor's name, permanent address, and ~~retail sales and use tax registration~~ certificate of registration number. The specialty market operator must require each specialty market vendor to exhibit a valid ~~retail sales tax license~~ certificate of registration for visual inspection by the specialty market operator at the time of registration, and must require each specialty market vendor to keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this section must be retained by the specialty market operator for no less than two years and must at any time be made available upon request to any law enforcement officer."

Section 8. G.S. 66-257 reads as rewritten:

"**§ 66-257. Misdemeanor violations.**

(a) Class 1 Misdemeanors. -- A person who does any of the following commits a Class 1 misdemeanor:

(1) Fails to keep a record of new merchandise and fails to produce a record or an affidavit pursuant to G.S. 66-254.

(2) Falsifies a record of new merchandise required by G.S. 66-254.

(b) Class 2 Misdemeanors. -- A person who does any of the following commits a Class 2 misdemeanor:

(1) If the person is an itinerant merchant or a specialty market vendor, fails to display the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.

(2) If the person is a specialty market operator, fails to maintain the daily registration list as required by G.S. 66-255.

(c) Class 3 Misdemeanors. -- A person who does any of the following commits a Class 3 misdemeanor:

(1) If the person is a peddler or an itinerant merchant, fails to obtain the permission of the property owner as required by G.S. 66-251.

(2) If the person is a peddler or a specialty market operator, fails to produce the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.

(3) Fails to provide name, address, or identification upon request as required by G.S. 66-253 or provides false information in response to the request.

(4) Knowingly gives false information when registering pursuant to G.S. 66-255.

(d) Defense. -- Whenever satisfactory evidence is presented in any court of the fact that permission to use property was not displayed as required by G.S. 66-251 or that a ~~retail sales tax license~~ certificate of registration was not displayed or produced as required by G.S. 66-252, the person charged may not be found guilty of that violation if the person produces in court a valid permission or a valid ~~retail sales tax license,~~ certificate of registration, respectively, that had been issued prior to the time the person was charged."

Section 9. Section 1 of this act becomes effective January 1, 1999. Sections 2 through 8 of this act become effective July 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1367:
Sales Tax Changes

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 2, 1998
SPONSOR: Representative Hill

House Bill 1367 makes three changes to the sales tax statutes that the Department of Revenue requested the Revenue Laws Study Committee to recommend:

- It raises the sales tax quarterly threshold from $50 to $100.
- It repeals the annual wholesale sales tax license.
- It changes the name of the retail sales tax license to certificate of registration.

Sales Tax Quarterly Threshold

Under current law, taxpayers that are liable for less than $50.00 a month in State and local sales and use taxes may file returns and remit the sales and use taxes owed on a quarterly basis. Taxpayers that are consistently liable for at least $20,000 a month in State and local sales and use taxes must file returns and remit taxes on a semi-monthly basis. All other taxpayers must file returns and remit taxes on a monthly basis.

Section 1 of the bill increases the sales tax quarterly threshold from $50 to $100. This change means that approximately 10,000 taxpayers that are now filing monthly sales and use tax returns will be able to file quarterly returns. The change will reduce the number of returns currently being filed by one-third. The threshold was last increased in 1991 from $25 to $50. This section becomes effective January 1, 1999. This change in the law will mean that approximately $2 million that would have been collected in fiscal year 1998-99 will not be collected until fiscal year 1999-00 because two months of collections are shifted into the 1999-00 fiscal year.

Repeal of the Wholesale Sales Tax License

Under current law, a wholesale merchant must obtain both a wholesale sales tax license and a certificate of registration, referred to in the statute as a retail sales tax license. The form for the two licenses is the same form. The information necessary to obtain both of these licenses is the same. The only difference is that the wholesale sales tax license is an annual license that costs $25. The certificate of registration needs to be acquired only once and it costs $15.

Section 2 of the bill repeals the wholesale sales tax license. Part 2 of Division II of Article 5 of Chapter 105 of the General Statutes contains one statute and that

statute imposes an annual privilege license tax of $25 on wholesale merchants. The Department does not need the information from this license because the wholesale merchant has already provided the Department with the information it needs on the certificate of registration. The tax is also expensive to collect and document and it is a nuisance tax for wholesale businesses to report and pay.

The statute being repealed contains a couple of other provisions that are also duplicated by other statutes in the Sales and Use Tax Article. G.S. 105-164.25 requires wholesale merchants to retain a duplicate copy of each bill of sale for a period of at least three years. G.S. 105-164.26 establishes the presumption that all gross receipts of a wholesale merchant are considered taxable unless the merchant obtains a certificate of resale from the purchaser. If the merchant does not obtain a certificate of resale from the purchaser, then the purchase is taxable at the rate established by the Sales and Use Tax Article.

Section 3 rewrites the law to clarify that both wholesale merchants and retailers must obtain a certificate of registration before beginning business. Although the statute refers to the certificate as a "retail sales tax license", it must be obtained by both wholesale merchants and retailers because a privilege tax is imposed on both of them under the sales and use tax article.

The section changes the name of the license to a "certificate of registration" because that more accurately reflects the nature of the document. It also corresponds to the name it is most commonly known as in the business community: a "Merchant's Certificate of Registration". Unlike the annual wholesale sales tax license, the certificate of registration needs to be obtained only once. It is valid unless it is revoked because the retailer or wholesale merchant fails to comply with the sales and use tax law. In the case of a retailer, the certificate becomes void if the retailer does not make any sales for a period of 18 months. If the certificate is revoked or becomes void, the retailer or wholesale merchant must register with the Department and obtain a new certificate of registration before engaging in business.

Sections 4 through 8 of the bill make conforming changes in the sales and use tax statutes and in the Article 32 of Chapter 66 of the General Statutes, which governs peddlers, itinerant merchants, and specialty markets. The changes made in sections 2 through 8 of the bill become effective July 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1367

SHORT TITLE: Sales Tax Changes

SPONSOR(S): Representatives Hill, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Wholesale License	($1,250,000)	($1,250,000)	($1,250,000)	($1,250,000)	($1,250,000)
Threshold	($2,000,000)				
Net Change	**($3,250,000)**	**($1,250,000)**	**($1,250,000)**	**($1,250,000)**	**($1,250,000)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue -Sales Tax Division

EFFECTIVE DATE: Section 1(threshold) becomes effective January 1, 1999. Sections 2 through 8 become effective July 1, 1998. The remainder is effective when it becomes law.

BILL SUMMARY: This act repeals the annual $25 wholesale license tax. The bill also increases the quarterly filing threshold for sales tax from $50 to $100.

ASSUMPTIONS AND METHODOLOGY:

Wholesale License

Section 1 of the bill repeals the annual $25 wholesale license. The Department of Revenue reports $1.25 million in revenue from this tax each year. Since the Director of the Sales Tax Division projects little or no growth in wholesale license revenues, this memo assumes a flat growth rate for this license.

Filing Threshold

Businesses that are liable for less than $50 in sales and use tax remit this tax to the Department of Revenue on a quarterly basis. The bill raises the filing threshold from $50 to $100 beginning January 1, 1999. After analyzing sales and use tax collections and the number of accounts by tax bracket, the Department of Revenue's Tax Research Division estimates that this will affect 10,000 taxpayers and will shift $2 million in collections from FY 1998-99 to 1999-00. There is no actual loss of income, but on a cash flow basis there will be $2 million less to spend on the FY 1998-99 budget.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic, Linda Struyk Millsaps
APPROVED BY:

DATE: May 30, 1998

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
H.B. 1367 A BILL TO BE ENTITLED AN ACT TO RAISE THE SALES TAX QUARTERLY THRESHOLD AND TO REPEAL THE ANNUAL WHOLESALE SALES TAX LICENSE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1374

Short Title: Property Tax Matters. (Public)

Sponsors: Representatives Neely, Brawley, Cansler, Capps, Gray, Hill, Ramsey, C. Wilson; Allred, Baddour, Hurley, and Morris.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHO CAN REPRESENT A TAXPAYER BEFORE THE COUNTY BOARD OF EQUALIZATION, TO CLARIFY THAT A HEARING BEFORE THE PROPERTY TAX COMMISSION IS DE NOVO, AND TO ALLOW A COUNTY TO PRORATE PROPERTY TAXES ON A MOTOR VEHICLE WHEN THE OWNER SURRENDERS THE VEHICLE'S LICENSE PLATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-322 is amended by adding a new section to read:

"(h) Representation. -- Notwithstanding G.S. 84-2.1, a person may represent a taxpayer before the board of equalization and review if the taxpayer gives the person written authorization to act on the taxpayer's behalf in the matter being heard by the board. The board of county commissioners may adopt a resolution that uniformly sets forth the form the written authorization must take."

Section 2. G.S. 105-290(a) reads as rewritten:

"(a) Duty to Hear Appeals. -- In its capacity as the State board of equalization and review, the Property Tax Commission shall hear and adjudicate appeals from boards of county commissioners and from county boards of equalization and review as provided in this section. Appeals heard and adjudicated by the Commission are hearings de novo. Failure of a taxpayer to present factual or legal arguments to a board of equalization and review shall not prejudice the taxpayer in subsequent proceedings before the Commission."

Section 3. G.S. 105-330.6(c) reads as rewritten:

"(c) If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) either transfers the motor vehicle to a new owner or moves out-of-state and registers the vehicle in another jurisdiction, and the owner surrenders the registration plates from the listed vehicle to the Division of Motor ~~Vehicles and at the date of surrender one or more full calendar months remains in the listed vehicle's tax year,~~ Vehicles, then the owner may apply for a release or refund of taxes on the vehicle for ~~the~~ any full calendar months remaining ~~after surrender.~~ in the vehicle's tax year after the date of surrender. To apply for a release or refund, the owner must present to the county tax collector within 120 days after surrendering the plates the receipt received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is 12 and the numerator of which is the number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax notice with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1374

SHORT TITLE: Property Tax Matters

SPONSOR(S): Representatives Neely, Brawley, Cansler, Capps, Gray, Hill, Ramsey, C. Wilson, Allred, Baddour, Hurley, and Morris.

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					

No General Fund impact is anticipated

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Property Tax Commission, County Governments.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill clarifies who can represent a taxpayer before the board of equalization and review. It also declares that a taxpayer's failure to present a legal or factual argument before the local board of equalization and review will not prevent them for presenting that argument to the Property Tax Commission. The bill also gives counties the specific authority to release or refund the taxes on a motor vehicle when the taxpayer moves out of state and surrenders their license plate.

ASSUMPTIONS AND METHODOLOGY: The first two items have no fiscal impact at the state or local level. The section dealing with motor vehicle taxes could have an impact at the local level. However, because may counties currently prorate this item, the bill will not create a significant change in local revenues.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:

DATE: June 1, 1998

EXPLANATION OF HOUSE BILL 1374:
PROPERTY TAX MATTERS

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 2, 1998
SPONSOR: Representative Neely

House Bill 1374 contains the Revenue Laws Study Committee's recommendations on a couple of different property tax matters. It clarifies two issues concerning property tax appeals that have long been assumed and it amends the property tax law concerning the taxation of motor vehicles:

- Section 1 provides that a taxpayer may authorize any person the taxpayer chooses to represent the taxpayer at property tax appeals before the county board of equalization and review. In response to concerns voiced at the last meeting, the proposal gives boards of county commissioners the ability to specify the form the authorization must take.
- Section 2 provides that appeals heard and adjudicated by the Property Tax Commission are considered "hearings de novo", meaning that the hearing is not limited to the record of the county board of equalization and review.
- Section 3 allows counties to prorate taxes on motor vehicles when the owner surrenders the registration plates to the Division of Motor Vehicles because the owner has moved to a different state and registered the vehicle in another jurisdiction.

Property Tax Appeals

In 1995, the General Assembly expanded the "practice of law" to include "...the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, ...". Under the law, it is unlawful for any person, other than an active member of the Bar of the State of North Carolina, to practice law in North Carolina.

The Property Tax Commission asked the State Bar to issue an advisory opinion as to whether a professional representative not licensed to practice law in North Carolina could appear before a county board of equalization and review concerning property valuation appeals. The State Bar concluded that if a county board of equalization and review is considered a quasi-judicial body, then such

conduct would constitute the practice of law and could only be undertaken by a licensed attorney.

The county board of equalization and review is the first body to which a taxpayer may appeal local property tax listings and appraisals. A decision of a board of equalization and review may be appealed to the Property Tax Commission. The board of equalization and review is composed of the members of the board of county commissioners unless the board of commissioners appoints a special board of equalization and review by resolution. The board of equalization and review has the following duties:

- To list, appraise, and assess any property that has been omitted from the tax lists.
- To correct all errors in the names of persons and in the description of properties subject to taxation.
- To increase or decrease the appraised value of property that has been listed and appraised at a figure that is below or above the appraisal conducted by the county.
- To hear taxpayer appeals concerning a property's valuation or taxation and to adopt an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed.

Because a board of equalization and review does make findings of fact, some would argue that it is a quasi-judicial body. Since 1995, some counties have begun to limit who may represent taxpayers before the county board of equalization and review to either the taxpayer or the taxpayer's attorney. To maintain consistency among the counties, the Department of Revenue asked the Revenue Laws Study Committee to clarify the issue of who may represent a taxpayer before the board of equalization and review.

Traditionally, this level of appeal has been less formal than appeals made to the Property Tax Commission. The Department would like to maintain this atmosphere of informality and cooperation because appeals resolved at the local level are far less costly in both money and time than appeals brought to the Property Tax Commission. Rather than debate the issue as to whether or not the board of equalization and review is a quasi-judicial body, this legislation seeks to retain the current practice: a taxpayer may give authorize anyone the taxpayer chooses to represent the taxpayer before the local board of equalization and review.

To protect the taxpayer, the legislation provides that the authorization the taxpayer gives to the person who will represent the taxpayer must be in writing. Some counties have experienced multiple appeals brought forth by tax consultants on behalf of taxpayers without the taxpayers' knowledge. It further provides that the failure of a taxpayer to present factual or legal arguments to a board of equalization and review does not prevent the taxpayer from raising those issues to the Property Tax Commission.

Property Taxation of Motor Vehicles

In 1993, counties began taxing motor vehicles that are registered with the Division of Motor Vehicles on a revolving, year-round basis. Under this system, the taxpayer receives a tax notice a couple of months after the registration is obtained or renewed and the taxes are due within four months after the registration was obtained or renewed. If the taxes remain unpaid for more than four months after they become due, the county places a block of the vehicle's registration with DMV. DMV will then refuse to renew the vehicle's registration the following year unless the taxpayer obtains a receipt showing that the previous year's taxes have been paid.

In some cases, taxpayers move out of state during this time period. Therefore, the "block" on the vehicle's registration does not impact them. In most instances, the taxpayer is willing to pay the taxes on the part of the tax year that the vehicle was registered in North Carolina. In order to obtain part of the tax liability, some counties prorate the amount of taxes due. This proposal gives counties the specific authority to release or refund the taxes on a motor vehicle when the taxpayer surrenders the vehicle's registration plate to the DMV because the taxpayer has moved out of state and registered the vehicle in another jurisdiction. The taxpayer may apply for a release or refund of taxes on the vehicle for any full calendar months remaining in the vehicle's tax year after the date of surrender.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
H.B. 1374 A BILL TO BE ENTITLED AN ACT TO CLARIFY WHO CAN REPRESENT A TAXPAYER BEFORE THE COUNTY BOARD OF EQUALIZATION, TO CLARIFY THAT A HEARING BEFORE THE PROPERTY TAX COMMISSION IS DE NOVO, AND TO ALLOW A COUNTY TO PRORATE PROPERTY TAXES ON A MOTOR VEHICLE WHEN THE OWNER SURRENDERS THE VEHICLE'S LICENSE PLATE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1422

Short Title: Make Credits Constitutional. (Public)

Sponsors: Representatives C. Wilson, Brawley, Cansler, Capps, Gray, Hill, Neely, and Ramsey.

Referred to: Finance.

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO REMOVE UNCONSTITUTIONAL RESTRICTIONS ON INDIVIDUAL INCOME TAX CREDITS FOR CHILD CARE AND FOR CONSTRUCTING DWELLINGS FOR THE HANDICAPPED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.1 reads as rewritten:

"**§ 105-151.1. ~~Tax credit~~ Credit for construction of dwelling units for handicapped persons.**

~~There is allowed to resident owners~~ An owner of multifamily rental units located in this State ~~as~~ is allowed a credit against the tax imposed by this Division ~~an amount~~ equal to five hundred fifty dollars ($550.00) for each dwelling unit constructed by the ~~resident~~ owner that conforms to Volume I-C of the North Carolina Building Code for the taxable year within which the construction of the dwelling unit is completed. The credit is allowed only for dwelling units completed during the taxable year that were required to be built in compliance with Volume I-C of the North Carolina Building Code. If the credit allowed by this section exceeds the tax imposed by this Division reduced by all other credits allowed, the excess may be carried forward for the next succeeding year. In order to claim the credit allowed by this section, the taxpayer ~~shall file with its~~ must file with the income tax return a copy of the occupancy permit on the face of which is recorded by the building inspector the number of units completed during the taxable year that conform to Volume I-C of the North Carolina Building Code. After recording the number of these units on the

face of the occupancy permit, the building inspector shall promptly forward a copy of the permit to the Building Accessibility Section of the Department of Insurance."

Section 2. G.S. 105-151.11(c) reads as rewritten:

"(c) Limitations. -- A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer. ~~No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State.~~"

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1422 (First Edition)

SHORT TITLE: Make Credits Constitutional

SPONSOR(S): Representative C. Wilson, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Child Care Credit	**($600,000)**	**($600,000)**	**($600,000)**	**($600,000)**	**($600,000)**
Handicapped Credit	**Minimal Impact**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue - Personal Taxes Division

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 1998.

BILL SUMMARY: The act removes unconstitutional restrictions that prevent nonresidents from taking individual income tax credits for child care and for constructing dwellings for the handicapped.

ASSUMPTIONS AND METHODOLOGY:

Child Care Credit

The Tax Research Division of the Department of Revenue estimates that allowing nonresidents to claim a prorated child care credit will produce a General Fund revenue loss of $400,000 to $600,000 per year. Tax Research used a 1991 individual income tax database to derive this estimate. This note will assume the maximum revenue loss of $600,000 to account for growth in the cost of dependent care and in the number of eligible taxpayers since 1991.

Handicapped Dwellings Credit

The Tax Research Division in the Department of Revenue could not identify in its income tax database any potential credits for nonresidents who build handicapped dwellings. According to data compiled by the Building Accessibility Section in the Department of Insurance, there have been 63 handicapped accessible units built by nonresident companies since 1991 (none in 1996 and 1997). At $550 per unit, this equates to $34,650 or $4950 per tax year. Based on this experience in the 1990's, expanding the credit to nonresidents should have little or no impact on the General Fund.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:

DATE: May 31, 1998

EXPLANATION OF HOUSE BILL 1422:
Make Credits Constitutional

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 1, 1998
SPONSOR: Representative Connie Wilson

House Bill 1422 is a recommendation of the Revenue Laws Study Committee and amends two individual income tax credits to remove restrictions that prevent nonresidents from taking the credits. These restrictions are probably unconstitutional in light of a recent United States Supreme Court case. The bill is effective for taxable years beginning on or after January 1, 1998.

On January 21, 1998, the United States Supreme Court held in Lunding v. New York that a state's tax laws must treat nonresidents on terms of 'substantial equality' with residents. The Court found that New York's individual income tax could not deny the alimony deduction to nonresidents while granting it to residents. The Court concluded that while the Privileges and Immunities Clause[1] of the United States Constitution affords states considerable discretion in formulating their income tax laws, there must be a substantial reason for the difference in treatment of residents and nonresidents within a tax structure.

North Carolina has two individual income tax credits that only residents may claim: the credit for construction of dwelling units for handicapped persons and the credit for child care and certain employment-related expenses. As discussed below, there does not appear to be any reason, much less a substantial one, for prohibiting nonresidents from taking either credit. It appears, therefore, that the part of each credit limiting it to residents would likely be ruled unconstitutional if challenged. House Bill 1422 removes the restriction of the construction credit to residents, and modifies the child care credit so that a nonresident may take a proportional amount of the credit based on the percentage of his or her income that is taxable to North Carolina.

G.S. 105-151.1 grants an individual income tax credit to those residents who construct multi-family rental units that conform with mandatory building code requirements related to accessibility by the handicapped. The dwelling units must be located in North Carolina. The residence of the owner bears no relation to the benefit to this State of having handicapped-accessible dwellings constructed. Furthermore, the same credit is allowed under the corporate

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[1] Section 2 of Article IV of the United States Constitution.

income tax law, but without any restriction based on the residence or domicile of the taxpayer that constructs the dwelling units.

G.S. 105-151.11 grants an individual income tax credit for child care or similar expenses incurred so the taxpayer may be gainfully employed. For nonresidents employed in North Carolina, the expenses would be directly related to the taxpayer's North Carolina income and thus there seems to be a substantial reason that the credit should be allowed rather than disallowed. In any case, legislative history of this credit shows that the provision preventing nonresidents from claiming the credit was retained in the law due to an oversight in 1981, when it should have been repealed.

The tax credit for child care expenses was formerly a deduction. On July 9, 1981, the General Assembly repealed the deduction and replaced it with a credit. At that time, nonresidents were not allowed to take income tax deductions that were not directly connected to their North Carolina income. Thus, in changing the deduction to a credit, the General Assembly retained the rule that nonresidents could not take advantage of the tax benefit. A few months later, however, the General Assembly abandoned its policy of disallowing nonresidents' deductions for expenses unrelated to North Carolina income and enacted a new law allowing a nonresident to take a proportional amount of these deductions. Through an oversight, the restriction that had been carried forward from the child care deduction to the child care credit was not similarly modified. Because this restriction remains in the law only because of an oversight, a court would be unlikely to find the required substantial reason for it to be upheld in a constitutional challenge.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☐ Committee Substitute for
H.B. 1422 A BILL TO BE ENTITLED AN ACT TO REMOVE UNCONSTITUTIONAL RESTRICTIONS ON INDIVIDUAL INCOME TAX CREDITS FOR CHILD CARE AND FOR CONSTRUCTING DWELLINGS FOR THE HANDICAPPED.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

House Finance — June 3, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
Leslie Bewaqua	NCCBI
Bill Cole	NSC
Jimmy Buffett	Margaritaville
Jim [illegible]	NCAFI
Sam Johnson	ATTY
Howard [illegible]	THEATRE OWNERS
Lynda Cooper	C.S.X. Corp.
Karen Carpenter	PCS
Jim Kerr	Smith, Anderson
Perri Morgan	NFIB
Dave Simpson	Carolinas AGC

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Allen Spence	Smith Kelly + Company
Berry Jenkins	Carolinas AGC
Christie Barbee	Asphalt Pavement Assn.
Mike Quarles	NCDOA
Keith Hartmann	DOR
Jay Hare	DOR
Patti Stowell	DOR
Betty Daniel	DOR
Gordon W. Deer	DOR
Ron Aycock	County Com. Assoc.
Bill Connelly	Revenue
Nancy Pomeranz	DOR

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Sabra Faires	Dept. of Revenue
Natalie Haskins	Charlotte Chamber
Nancy Bradley	NCCBD
Becky Stuart	PPAB
Cam Cover	BPM HL
Jane Upchurch	CP&L
AB Swindell	BFT
VL McBride	NCTA
Ann Case	NCRMA
SMarkham	EGHS
David Simmons	ZDA, PA
Alan Miles	Bentley & Dyson LLP

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Doug Miskew	IBM
Bill Scoggin	NC Bar Assoc.
John Bode	Bode Call & Stroupe
Mike Waters	N.C. Recreation & Pk. Soc.
Alice Garland	Electricities
Estelle Davis	"
Mike Grier	JM Thompson
Deborah Ross	ACLU

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, JUNE 2, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Tuesday, June 2, 1998 at 8:30 a.m. in Room 544-LOB. A silent roll was called (roll list denotes members present).

Rep. Dickson called the meeting to order and introduced the Pages.

HB-1252 CRIMINAL TAX PENALTY TO HOME COUNTY

Rep. McCombs reminded members this was continued from last week and carried over so Rep. Hensley could obtain additional information from his county. Rep. Hensley explained what he had learned about this bill and shared concerns. Rep. McCombs responded to his comments and requested this bill be sent to a sub-sub-committee. Rep. Nesbitt spoke on the bill and Rep. Brown agreed with his comments. Chairman Dickson announced it would be sent to a sub-sub-committee.

HB-1318 LIMIT NONRESIDENT WITHHOLDING

Rep. Neely explained the bill and how it was generated from the Revenue Laws Study Committee. Rep. Cunningham asked for a representative from the Department of Revenue to address members. Ms. Nancy Pomeranz, DOR, spoke in support of the bill. Rep. Hackney advised he had concerns regarding high schools using entertaining groups. Rep. Neely responded. Rep. Hackney continued with questions to Ms. Pomeranz regarding various entertainment groups and she responded. He then continued with comments and Rep. Neely responded. Rep. Gamble questioned federal guidelines for out-of-state speakers and Rep. Neely answered his inquiry.

Rep. McMahan moved for a favorable report.

Rep. Hightower asked if circus/carnival entertainment was exempt. Ms. Pomeranz answered and explained. Rep. Luebke was concerned about the definition of an entertainer. Rep. Neely read the statute. Rep. Hackney offered additional concerns about entertainers and feels this is not a solution to the problem of withholding. Rep. Neely responded again. Rep. Brawley and Rep. McComas spoke. Rep. Neely responded to their comments. Rep. McComas

questioned the film industry in his district. Rep. Neely advised he had consulted someone from the film industry. Rep. Cole directed a question about internal control by CPA's to Rep. Cansler (who was in the meeting to sponsor another bill) and he answered. Rep. Cansler spoke to members and relayed the discussion from the Revenue Laws Study Committee. Rep. Cole inquired as to whether the State Auditors office had been consulted and Rep. Neely advised he didn't think so. Rep. Dedmon asked about religious speakers and if they were exempted. Rep. Neely answered. Rep. Russell asked how other states handled this and Rep. Neely explained.

Rep. Nesbitt sent forth an amendment and explained. Mr. Richard Bostic, Fiscal Research Division, gave an explanation for the amendment. Ms. Pomeranz then spoke in support of the amendment. Rep. Nesbitt spoke again and urged support. Rep. Hunter questioned the fiscal impact and Mr. Bostic and Ms. Martha Walston, Fiscal Research Division, gave additional explanation. Rep. Neely advised he supported the amendment. The vote was taken and adopted.

Rep. Womble questioned regulations for entertainers. Ms. Pomeranz responded. Rep. Womble was concerned because "entertainers" is not defined. Rep. McMahan spoke again and offered additional explanation. Rep. Neely then spoke again in favor of the bill. Rep. Berry asked for a re-cap of the Nesbitt amendment and Rep. Neely explained again. Rep. Hill inquired about an upcoming event and how it would be handled if this bill passed. Rep. Neely responded.

Rep. Goodwin sent forth an amendment, Ms. Walston read and explained. Rep. Goodwin spoke on his amendment and urged adoption. Rep. Neely opposed the amendment and explained why. Rep. Goodwin asked Ms. Pomeranz her opinion of the amendment and the current law regarding clergy. She responded. Rep. Goodwin made additional comments. Rep. Hightower had an example and asked for clarification from Rep. Neely. He responded. The vote was taken on this amendment and it failed.

Rep. Howard continued with discussion and concerns and Rep. Neely responded.

Time expired and the meeting adjourned at 9:55.

Rep. Dickson, Chairman

Cindy Brooks, Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

Tuesday, June 2, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER:

Rep. Dickson

BILLS FOR DISCUSSION:

HB-1252 - Criminal Tax Penalty to Home County
Rep. MCCombs

HB-1318 - Limit Nonresident Withholding
Rep. Neely

HB-1320 - Tax on Movies
Rep. Cansler

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1252
PROPOSED COMMITTEE SUBSTITUTE (H1252-CSRB-1)

Short Title: Criminal Tax Penalty to Home County. (Public)

Sponsors:

Referred to: Judiciary I, if favorable, Finance.

May 12, 1998

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-452 reads as rewritten:

"**§ 115C-452. Fines and forfeitures.**

(a) The clear proceeds of all penalties and forfeitures and of all fines collected in the General Court of Justice in each county shall be remitted by the clerk of the superior court to the county finance ~~officer, who shall forthwith~~ officer. In the case of a criminal violation involving a tax imposed under Chapter 105 of the General Statutes, the trial judge shall determine whether the defendant was a resident of North Carolina when the offense was committed. If the defendant was a resident of this State when the offense was committed, then the trial judge shall determine the defendant's county of residence and the clerk shall 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.

(b) Upon receipt of funds under this section, the county finance officer shall determine what portion of the total is due to each local school administrative unit in the county and remit 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."

Section 2. This act becomes effective December 1, 1998, and applies to fines imposed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1252

SHORT TITLE: Criminal Tax Penalty to Home County

SPONSOR(S): Representative McCombs

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	Redistribution of some fines among counties- approximately $93,833 per year				
EXPENDITURES	No substantial fiscal impact to implement legislation				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Department; County Finance Offices (School Funds).

EFFECTIVE DATE: December 1, 1998

BILL SUMMARY: CRIMINAL TAX PENALTY TO HOME COUNTY. 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. Amends GS 115C-452 to direct the proceeds of fines, penalties and forfeitures in criminal tax cases to go to the county in which the defendant resided when the offense was committed.

ASSUMPTIONS AND METHODOLOGY: Judicial Department

Overview of Legislation

Currently, if a defendant is charged and convicted with a criminal tax penalty in Wake County his or her fines and forfeitures are remitted to the Wake County finance officer for distribution to the school fund, regardless of where the defendant resides. This legislation amends this provision by requiring these fines and forfeitures to be distributed to the county in which the defendant resided at the time of the offense.

Redistribution of Fines and Forfeitures to County School Funds

Judicial Department data for calendar year 1997 shows 1,105 cases involving convictions for criminal tax offenses. The vast majority of these cases were for failure to file/pay sales tax (633 cases under G.S. 105-236, a misdemeanor) or failure to file/pay income tax (331 cases under G.S. 105-236, a misdemeanor). These misdemeanor cases are prosecuted by local revenue officers in counties throughout the state. According to the Department of Revenue's Criminal Division, approximately 25 to 30 of the "more serious" cases (e.g., evasion, aid and assistance, forgery, schemes) a year are prosecuted specifically in Wake County and would be subject to this legislation. Criminal Division data shows that an average of **$93,833** in fines were collected and distributed to the Wake County finance officer over the last 3 years, even though the defendant resided in another county ($95,300 in 1995, $122,300 in 1996, and $63,900 in 1997). Thus, it is estimated that this amount of money would be redistributed to other counties each year. Because there is no pattern to the distribution of the "more serious" cases, it is not possible to determine which counties would gain financially from this legislation.

Implementation of Legislation

The AOC anticipates implementing this legislation would not have a major fiscal impact on the Judicial Department. There may be a small amount of additional court time involved in determining the specific county where the defendant resided at the time of the offense. The judge's finding would be noted by the courtroom clerk and then transferred to the clerk who enters this information into the AOC automated fiscal system. Additional clerk time in Wake County would be devoted to properly identifying the criminal tax codes to ensure that the fines and forfeitures are remitted to the proper county. Finally, the automated financial system in the Wake County Clerks Office would have to be modified to accommodate these transfers. The AOC believes it could handle these additional responsibilities within existing resources.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Charles Perusse; Linda Millsaps
APPROVED BY: Tom Covington
DATE: May 28, 1998

EXPLANATION OF HOUSE BILL 1252:
(Proposed Committee Substitute)
Criminal Tax Penalty to Home County

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: May 28, 1998
SPONSOR: Rep. McCombs

House Bill 1252 provides that in criminal tax prosecutions, any criminal fine shall be remitted to the county of the defendant's residence rather than the county in which the crime is prosecuted. It would become effective December 1, 1998.

Section 7 of Article IX of the North Carolina Constitution provides that the proceeds of penalties, forfeitures, and fines collected "in the several counties" for any breach of the penal laws of the State shall belong to "the several counties" and shall be used only for public schools. The Constitution does not specify which county receives the proceeds of each fine, forfeiture, or penalty. In the case of a civil penalty or forfeiture collected by a State agency, the General Assembly has provided that the proceeds are allocated among all local school boards on the basis of average daily membership. G.S. 115C-457.1 through G.S. 115C-457.3. In the case of a penalty, forfeiture, or fine collected by a State court, the General Assembly has provided that the clerk of superior court shall remit the proceeds to the local finance officer for that county. The local finance officer then distributes the proceeds to the local school boards of that county on the basis of average daily membership. G.S. 115C-452. If a case is transferred from one county to the next, however, the proceeds are remitted by the clerk of court back to the first county. In re Dunlap, 66 N.C. App. 152, 155 (1984).

Most criminal cases are brought in the county where the crime was committed. In criminal tax cases, however, the prosecution generally takes place in Wake County rather than in the county in which the taxpayer resided. The Department of Revenue finds that it is more efficient to prosecute these cases, which are few in number, in Wake County than to travel throughout the state. Thus, Wake County receives the proceeds of most criminal tax cases that result in a fine. This bill provides that in these criminal tax cases, if the defendant resided in North Carolina when the crime was committed, the proceeds of any criminal fine will be directed to the county of residence rather than the county in which

the case is prosecuted. As a result of this bill, the Wake County clerk would occasionally be required to remit proceeds to other counties.

Technical Considerations:

1. The bill refers to criminal violations of Chapter 105. There are only three criminal violations in Chapter 105. Many of the criminal violations involving a tax imposed under Chapter 105 are enforced under Chapter 14: G.S. 14-91 (Embezzlement of State Property), G.S. 14-92 (Embezzlement of Funds), G.S. 14-100 (Obtaining Property by False Pretenses), G.S. 14-119 (Forgery), and G.S. 14-120 (Uttering Forged Paper). The Committee Substitute broadens the language of the bill to include all criminal offenses involving a tax imposed under Chapter 105.
2. The Committee Substitute directs the trial judge to determine the defendant's county of residence.
3. The Committee Substitute provides that the bill is applicable to fines imposed on or after the effective date, December 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1318

Short Title: Limit Nonresident Withholding. (Public)

Sponsors: Representatives Neely, Brawley, Cansler, Capps, Gray, Hill, Ramsey, C. Wilson; and Hurley.

Referred to: Finance.

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE NONRESIDENT WITHHOLDING REQUIREMENT TO ATHLETES AND ENTERTAINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.1(2) reads as rewritten:

"(2) Contractor. -- Either of the following:

a. A nonresident individual who performs ~~personal services~~ in this State for compensation other than ~~wages.~~ wages any personal services in connection with a performance, an entertainment, an athletic event, or the creation of a film or television program.

b. A nonresident entity that provides for the performance ~~of the following personal services~~ in this State for ~~compensation: services~~ compensation of any personal services in connection with a performance, an entertainment, an athletic event, or the creation of a film or television ~~program, or the construction or repair of a building or highway.~~ program."

Section 2. Section 4 of S.L. 1997-109 is repealed.

Section 3. This act is effective retroactively as of January 1, 1998. Notwithstanding Sections 1 and 2 of this act, any tax withheld under G.S. 105-163.3 may be repaid to the person from whom the tax was withheld only as provided in G.S. 105-163.3(f).

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1318 (First Edition)

SHORT TITLE: Limit Nonresident Withholding

SPONSOR(S): Representatives Neely, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	($million) FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	(7.0)	(7.0)	(7.0)	(7.0)	(7.0)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: The act is effective retroactively as of January 1, 1998.

BILL SUMMARY: This bill will limit the withholding requirement for payments to nonresident contractors to apply only to athletes and entertainers.

ASSUMPTIONS AND METHODOLOGY:
The fiscal note for HB 57 (S. L. 1997-109) attributed most of the estimated revenue gain from nonresident withholding to collections from out of state building contractors. In that note it was reported that the North Carolina Licensing Board for General Contractors had 1,765 out of state companies licensed to work in the state in 1995. These firms sought licensing to work on projects greater than $30,000 on buildings, highways, public utilities, grading, and improvement of structures. The majority of these firms are from southeastern states such as South Carolina (426), Georgia (205), Virginia (174), Tennessee (155), and Florida (152). However, the Licensing Board stated that other contractors work in the state without a license because of the contract size (< $30,000) or because they are doing federal jobs.

From 1993 to 1996, 48 out-of-state firms, representing both design and construction, did business with the State Construction Office. The Department of Revenue was asked to check on whether these firms filed income tax returns in North Carolina. Of the 48 firms, only 58.3% or 28

filed returns. If firms working directly for the state are filing only 58.3% of the time, one may assume those contractors working for private customers file at lower rates or not at all.

The previous fiscal note assumed that each licensed nonresident contractor earned $100,000 a year in North Carolina and did not file income tax returns in North Carolina. If the state withheld 4% of the income from these 1,765 nonresident contractors, the estimated revenue gain would have been $7.06 million a year. Passage of this bill will negate the collection of this revenue.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:

DATE: May 25, 1998

EXPLANATION OF HOUSE BILL 1318:
Limit Nonresident Withholding

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 28, 1998
SPONSOR: Representatives Neely, Brawley, Cansler, Capps, Gray, Hill, Ramsey, C.Wilson; and Hurley.

House Bill 1318 is a recommendation of the Revenue Laws Study Committee and would limit the withholding requirement for payments to nonresident contractors, so that it would apply only to payments to contractors doing business as athletes and entertainers. It would be effective retroactively as of January 1, 1998.

The 1997 General Assembly enacted S.L. 1997-109 to require withholding from compensation paid to nonresident individuals and nonresident entities for personal services performed in North Carolina. The nonresident withholding requirement was suggested by the Department of Revenue and recommended to the 1997 General Assembly by the Revenue Laws Study Committee. The withholding requirement was phased in as follows. Beginning January 1, 1998, it applied to payments to individuals for any personal services and payments to entities for services relating to entertainment, athletic events, and construction. The withholding requirement was to be expanded to payments to entities for all personal services effective January 1, 1999.

After S.L. 1997-109 became law, legislators, staff, and the Department of Revenue were contacted by businesses that were required to withhold from their payments for personal services. These businesses stated that the withholding requirement would create an expensive, time-consuming burden on them. They would have to reprogram their accounting software, examine invoices manually, and make difficult judgment calls regarding where services were performed. Large, multistate corporations in particular claimed that the new law would be burdensome. In response to these concerns, House Bill 1318 would repeal nearly the entire withholding requirement. The only part that would be retained is the requirement to withhold from payments for services relating to entertainment and athletic events.

The rollback of the withholding requirement would become effective retroactively as of January 1, 1998. Anyone who had been complying with the law by withholding for services other than those performed by athletes and entertainers could choose to refund the withheld taxes only if the taxes had not yet been paid into the Department of Revenue. All taxpayers who had taxes

withheld from their payments will receive a credit for the withheld taxes when they file their income tax return.

The rationale for limiting the withholding requirement to athletes and entertainers is that athletic and entertainment events can be easily identified by those required to withhold, the entire performance is clearly taxable to the state where it occurs, and, because of the large sums often involved, the administrative burden of withholding is small compared to the benefit the State receives. For other personal services performed by nonresidents, the burden of compliance outweighs the benefit because the services are less easily identified and may be performed partly in this state and partly in another state. For those, such as large, multistate corporations, who deal with a myriad of contractors for goods and services throughout the nation, the burden can be significant.

Many nonresidents who derive income from North Carolina do not pay the North Carolina tax due on this income. This problem is particularly troublesome with respect to single event performers such as athletes or entertainers who may be paid large amounts for their work in North Carolina. It is difficult, expensive, and inefficient for the Department of Revenue to trace and pursue these nonresidents who do not pay the tax they owe. The 1997 act imposed the withholding requirement to address this problem.

The 1997 act requires a person or entity who, in the course of a trade or business, pays a nonresident more than $600 for personal services in this State to withhold 4% of the payment and deposit the withheld taxes with the Department of Revenue. The withholding agent must register with the Department of Revenue. The withheld taxes are due by the last day of the first month after the end of the calendar quarter in which the withholding agent paid the nonresident. As is the case with employers who withhold from employees' wages, the withholding agent is required to give each nonresident a statement similar to a W-2 form in January and to provide a compilation of these statements to the Department of Revenue. Filing these documents relieves the agent of the existing information reporting requirement of G.S. 105-154.

The withheld taxes are credited to the nonresident individual or entity from which they were withheld. If the entity is a pass-through entity such as a partnership, Subchapter S corporation, or limited liability company, the credit will pass through to the partners or other owners of the entity. The nonresident receives credit for the withheld taxes by filing a North Carolina income tax return; any excess will be refunded to the taxpayer.

adopted

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1318

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1318-ALA-001

Date_____,1998

Comm. Sub. []
Amends Title [yes]

Representative Nesbitt
moves to amend the bill on page 1, line 3,
by rewriting the line to read:
"ATHLETES AND ENTERTAINERS AND TO INCREASE THE THRESHOLD REQUIREMENT FOR NONRESIDENT WITHHOLDING."

and on page 1, lines 19 and 20, by inserting between those lines the following:
"Section 3. G.S. 105-163.3(a) is rewritten to read:
'(a) Requirement. -- Every payer who pays a contractor more than ~~six hundred dollars ($600.00)~~ five thousand dollars ($5,000) during a calendar year shall deduct and withhold from compensation paid to a contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary.'";

and by rewriting page 1, line 21 to read:
"Nothwithstanding Sections 1, 2, and 3 of this act, any tax withheld under G.S. 105-163.3";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1318

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1318-ALA-001 Page 2 of __

and by renumbering the remaining section accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1320

Short Title: Tax on Movies. (Public)

Sponsors: Representatives Cansler, Brawley, Capps, Gray, Hill, Neely, Ramsey, C. Wilson; Esposito and Starnes.

Referred to: Finance.

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE STATE PRIVILEGE TAX ON GROSS RECEIPTS FROM MOTION PICTURE SHOWS.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-38.1. Amusements - Motion picture shows.**

(a) Tax. -- A privilege tax at the rate of one percent (1%) is imposed on the gross receipts of a person who is engaged in the business of operating a motion picture show for which an admission is charged. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month. If a person offers an entertainment or amusement that includes both a motion picture taxable under this section and an entertainment or amusement taxable under G.S. 105-37.1 or G.S. 105-38, the tax in G.S. 105-37.1 or G.S. 105-38, as appropriate, applies to the entire gross receipts and the tax levied in this section does not apply.

(b) Exemption. -- Gross receipts from a motion picture show promoted and managed by a qualifying corporation that operates a center for the performing and visual arts is exempt from the tax imposed under this section if the motion picture is shown at the center and if the showing of motion pictures is not the primary purpose of the center. As used in this subsection, 'qualifying corporation' and 'center for the performing and visual arts' have the same meaning as in G.S. 105-37.1(a)."

Section 2. This act becomes effective October 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1320 (First Edition)

SHORT TITLE: Tax on Movies

SPONSOR(S): Representative Cansler, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	$1,525,657	$2,118,498	$2,225,021	$2,336,521	$2,452,998

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: October 1, 1998

BILL SUMMARY: The bill imposes a one percent gross receipts tax on motion picture shows instead of the three percent tax charged other entertainment or amusement.

BACKGROUND: When the privilege tax on motion picture shows was repealed on July 1, 1997, movies then became subject to the 3% gross receipts tax charged amusements and entertainment. However, the Department of Revenue chose not to assess this tax in FY 97-98 until the General Assembly clarified that the tax should be collected. The Department's uncertainty arose from the absence of debate by the 1996 General Assembly on the issue of imposing a gross receipt tax on movies.

ASSUMPTIONS AND METHODOLOGY:
A 1% gross receipts tax on movie admissions would generate approximately $1.5 million in General Fund revenue in FY 1998-99 if enacted on October 1, 1998. The estimate of gross receipts generated by North Carolina movie theaters in 1996 is based on data from the Motion Pictures Association of America. Nationwide, the box office gross was $5.9 billion on 1.3 billion tickets sold. The average admission price at the 29,690 movie screens across the country was $4.42. The average gross revenue per screen in 1996 was $199,107. The National

Association of Theater Owners reported 897 movie screens in North Carolina in 1996. Assuming NC theater gross revenues equal the national average, the 897 Tarheel screens produced $178.6 million in revenues in 1996. If a 1% gross receipts tax were applied, the state would have earned $1.78 million in taxes in 1996.

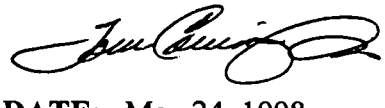
The number of NC screens has grown 5% a year since 1992, but gross revenue per screen has risen and fallen over the last five years. For estimating purposes, it is assumed that the number of movie screens will increase 5% a year, but there will be no increase in gross revenue per screen.

	NC Screens	Gross per screen	Gross revenue	1% tax
1996	897	$199,107	$ 178,598,979	$ 1,785,990
1997	942	$199,107	$ 187,558,794	$ 1,875,588
1998	989	$199,107	$ 196,916,823	$ 1,969,168
1999	1,038	$199,107	$ 206,673,066	$ 2,066,731
2000	1,090	$199,107	$ 217,026,630	$ 2,170,266
2001	1,145	$199,107	$ 227,977,515	$ 2,279,775
2002	1,202	$199,107	$ 239,326,614	$ 2,393,266
2003	1,262	$199,107	$ 251,273,034	$ 2,512,730

The chart below assumes an October 1, 1998 effective date for FY 1998-99. The remaining years are adjusted for fiscal years by taking half of one calendar year plus half of the next calendar year.

Fiscal Year	Revenue
1998-99	$ 1,525,657
1999-00	$ 2,118,498
2000-01	$ 2,225,021
2001-02	$ 2,336,521
2002-03	$ 2,452,998

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:



DATE: May 24, 1998

EXPLANATION OF HOUSE BILL 1320:
Tax on Movies

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 25, 1998
SPONSOR: Representatives Cansler, Brawley, Capps, Gray, Hill, Neely, Ramsey, C.Wilson, Esposito and Starnes.

House Bill 1320 is a recommendation of the Revenue Laws Study Committee and reduces the current 3% gross receipts tax on motion pictures to 1%, effective October 1, 1998. The Bill also clarifies that if a taxpayer offers an entertainment or amusement that includes both a motion picture and an entertainment or amusement that is subject to the 3% gross receipts tax, then the higher rate applies. The October 1, 1998, effective date would give the Department of Revenue time to print the forms and identify taxpayers. Sales tax would continue to be assessed on food and drink sold at motion picture shows.

The Bill clarifies the exemption of motion pictures that are shown at a center for the performing and visual arts that is promoted and managed by an organization organized for religious, charitable, scientific, literary, or educational purposes. The showing of the motion picture show may not be the primary purpose of the center. This exemption was set out in the privilege license statute on movies that was repealed , effective July 1, 1997.

History

The gross receipts tax on motion picture shows was first codified in 1939. The rate of this tax was the same as the sales tax rate. There was also an annual license tax assessed against motion picture shows, and this license tax was applied as a credit upon or advance payment of the gross receipts tax.

In 1943, the General Assembly repealed the gross receipts tax on motion picture shows, and assessed this tax only on other forms of entertainment not otherwise taxed or specifically exempted. The annual license tax continued to be imposed. In 1949, the General Assembly enacted a new statute, G.S. 105-37.1, that assessed an annual license tax and a gross receipts tax on amusements not otherwise taxed or specifically exempted. Since motion picture shows were paying a license tax, they were not subject to G.S. 105-37.1. In 1949, the General Assembly first taxed operating outdoor and drive-in motion picture shows. The tax was based upon population of the town and car capacity. In 1989, the General Assembly amended the privilege license tax on drive-ins by doing away

with the tax rate based upon population and car capacity and, instead, assessing a $100 privilege license tax.

During the Second Extra Session of the 1996 Session, a number of State privilege license taxes were repealed, including the privilege taxes on motion picture shows. The Revenue Laws Study Committee had recommended to the 1995 General Assembly that most of the State privilege license taxes imposed under Article 2 of Chapter 105 of the General Statutes be repealed, effective July 1, 1997. The State privilege license taxes on motion picture shows that were repealed were the following:

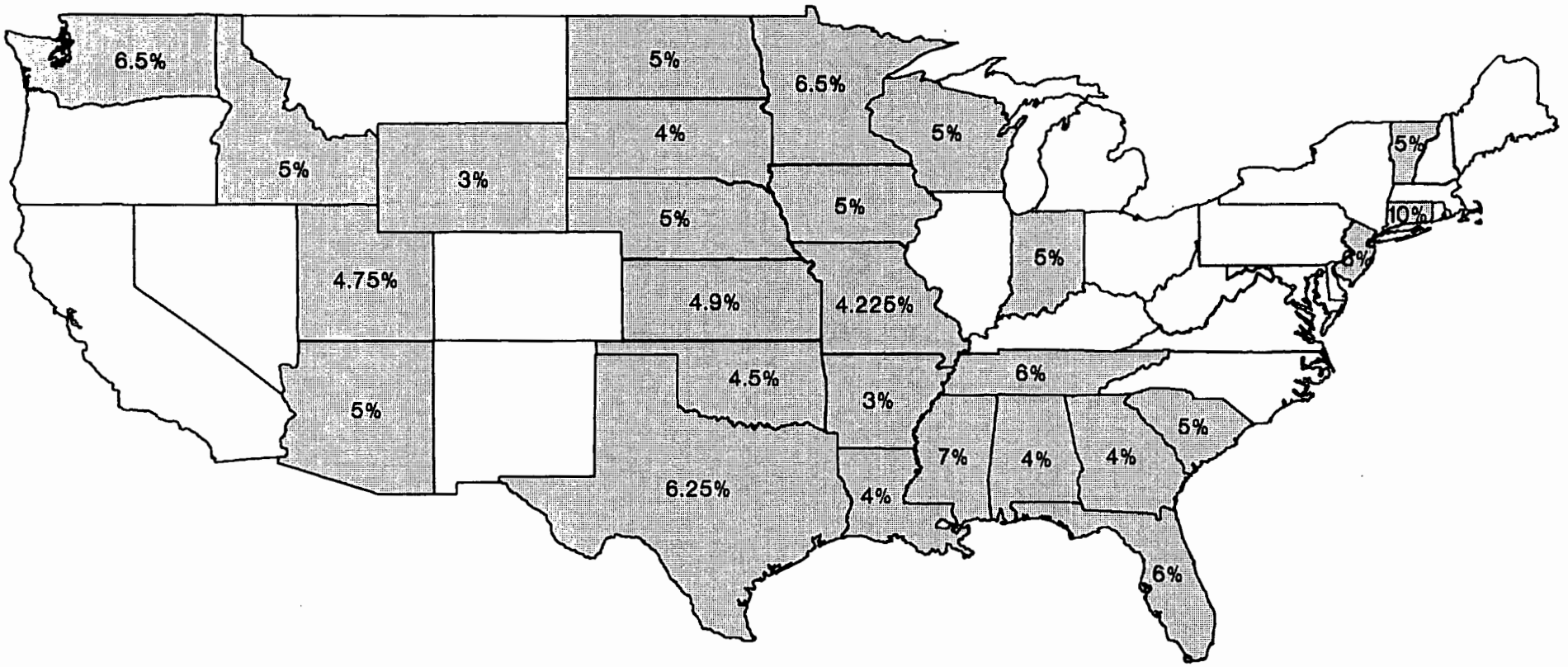
- G.S. 105-36 - Required those engaged in the business of manufacturing, selling, leasing, furnishing and/or distributing films which an admission fee was charged to apply for a privilege license and pay a tax thereon of $625 a year.
- G.S. 105-36.1 - Required those engaged in the business of operating an outdoor or drive-in moving picture show for compensation to apply for a privilege license and a pay a tax thereon of $100 a year.
- G.S. 105-37 - Required those engaged in the business of operating a moving picture show for compensation to apply for a license and pay $200 for each room, hall, or tent used. Only half the tax was required if the motion picture show operated three days or less each week.

When the foregoing statutes were repealed, effective July 1, 1997, motion picture shows fell into the category of amusements not otherwise taxed as set out in G.S. 105-37.1 and, therefore, subject to the 3% gross receipts tax and the $50.00 annual license tax assessed in that statute. However, the Department of Revenue did not begin assessing motion picture shows a gross receipts tax when the privilege license taxes were repealed. The Department believed that when the General Assembly repealed these license taxes, it did not intend to assess any tax on motion picture shows. During the 1996 Session, there appears to have been no discussion of a gross receipts tax on theaters, if the privilege tax was repealed.

The Commerce Clearing House State Tax Guide shows that 27 states tax movie admissions in one fashion or another. (see attached map). Twenty-one states simply apply their sales tax to theater admissions. Alabama and Arkansas have a specific gross receipts tax on movie admissions, while Connecticut and South Carolina have a general admissions tax. Arizona has a transaction privilege tax on theaters and Indiana has a gross income tax on theaters. Twenty-five of these twenty-seven states have movie taxes higher than North Carolina's 3% gross receipts tax. Eleven of the states that tax movie admissions are members of the Southern Legislative Conference.

Staff's research also found that North Carolina's policy of taxing movie concessions is consistent with other states and the District of Columbia.

STATE TAX ON MOVIE ADMISSIONS



Source: CCH (Commerce Clearing House Inc.) State Tax Guide

VISITOR REGISTRATION SHEET

House Finance — June 2, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Pomeranz	DOR
Susan Harris	WCPSS
Michael Fenelly	Wake County
Leslie Bevacqua	NCCBI
Howard Gainey	THEATRE OWNERS
Wm. D. Cole	Norfolk Southern Corp.
Lyman Cooper	CSX. Corp
Sam Johnson	Atty
Garland Garrett	Gov Office
Matt Osborne	AOC
Mike Carpenter	NCOSA
Colon Willoughby	Wake Co D.A.
Tom Dixon	DOR

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jay Hare	DOR
Keith Hartman	DOR
Betty Daniel	DOR
Mike Dunn	JM Thompson Co
Cindy Kuerhart	Fowler Jones Buss Construction WSNC
BERRY Jenkins	CAROLINAS AGC
Dave Simpson	CAROLINAS AGC
Nancy Pomeranz	
Paul Gibbs	OSBM
Patti Seawell	DOR
	NCHBA

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Susan Markham	Eg HS
Alice Garland	Electricities
Mary Bradley	NCCBA
Natalie Haskins	Charlotte Chamber
Andy Romanet	N.C.L.M.
Jane Upchurch	CP&L
Jimmy Buffet	Margaritaville
Bernard Allen	SOS
Yamara Hedgepeth	
Robert Watson	Office of the Gov. (Indems)
Doug Miskew	IBM
Annette Ethridge	Office of Gov.
Mary Mumford	Poyner & Spruill

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jim Fotis	NC AFI
Chris Bo-	Bove & Assoc.
C Parker	Bone & Assoc.
Willie Riddick	D&R
Saba Faires	Dept of Revenue
Amy Jo Bain	Smith Anderson
Alan Miles	Bailey & Dixon LLP
AB Swindell	BFI
Jim Blackburn	NC Association of County Commissioners
[illegible]	[illegible]
RB Sloan	Crescent Electric Membership Corp.

MINUTES

HOUSE COMMITTEE ON FINANCE

Thursday, May 28, 1998

8:30 a.m. Room 544-LOB

Rep. C. Wilson called the meeting to order and introduced Pages.

HB-1252 - CRIMINAL TAX PENALTY TO HOME COUNTY

Rep. McCombs explained the bill. Rep. Starnes moved for adoption of the Proposed Committee Substitute for discussion. Rep. Brown moved for a favorable report. Rep. Hensley spoke on the bill and shared concerns. Rep. Hackney had concerns regarding how Clerks of Courts will handle this. Rep. McCombs and Ms. Linda Millsap, Fiscal Research Division responded. Rep. Hackney spoke again. Mr. Tom Dickson, Criminal Investigator, Department of Revenue, addressed members and made additional comments in support of the bill. Rep. Hackney was still concerned. Rep. Hensley inquired about residence. He moved to displace the bill until his county officials could be contacted. He then referred with the bill sponsor and agreed to prepare an amendment. Rep. Arnold spoke. The bill was temporarily displaced.

HB-1320 - NO TAX ON MOVIES

Rep. Cansler explained that this was a recommendation from the Revenue Laws Study Committee. Rep. Hightower questioned sporting events taxes. Ms. Martha Walston, Fiscal Research Division, responded. Rep. Hightower requested a fiscal note which would include other entertainment's. He asked to postpone until this information could be provided. Chairman Wilson advised discussion would continue. Rep. Hackney asked about other states and concession taxes. Rep. Cansler responded. Rep. Nichols asked about the screen tax and Rep. Cansler responded. Mr. Richard Bostic, Fiscal Research Division, gave an additional explanation. Rep. Decker questioned why Department of Revenue can levy a tax and how much it will cost to administer this tax. Mr. Jay Haire, Corporate Excise Division, Department of Revenue, replied. Rep. Decker continued with comments and questions for Mr. Haire. Rep. Gamble and Rep. Ramsey had questions which Rep. Cansler replied to. Rep. Capps shared information from the Revenue Laws Study Committee. Rep. Nichols spoke against raising the tax and urged the use of the screen tax. Rep. Miller questioned the definition of "movie screen" vs. other movie entertainment. Rep. Hackney asked if the tax of ticket sales and concessions are the same. Ms. Martha Walston explained.

Time expired and the meeting adjourned at 9:50.

Connie Wilson
Rep. C. Wilson, Chair

Cindy Brooks
Cindy Brooks, Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

THURSDAY, MAY 28, 1998

9:00 A.M. ROOM 544-LOB

CALL TO ORDER:

Rep. Wilson

BILLS FOR DISCUSSION:

HB-1252 - Criminal Tax Penalty to Home County
Rep. MCCombs

HB-1320 - Tax on Movies
Rep. Cansler

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1252
PROPOSED COMMITTEE SUBSTITUTE (H1252-CSRB-1)

Short Title: Criminal Tax Penalty to Home County. (Public)

Sponsors:

Referred to: Judiciary I, if favorable, Finance.

May 12, 1998

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-452 reads as rewritten:

"**§ 115C-452. Fines and forfeitures.**

(a) The clear proceeds of all penalties and forfeitures and of all fines collected in the General Court of Justice in each county shall be remitted by the clerk of the superior court to the county finance ~~officer, who shall forthwith~~ officer. In the case of a criminal violation involving a tax imposed under Chapter 105 of the General Statutes, the trial judge shall determine whether the defendant was a resident of North Carolina when the offense was committed. If the defendant was a resident of this State when the offense was committed, then the trial judge shall determine the defendant's county of residence and the clerk shall 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.

(b) Upon receipt of funds under this section, the county finance officer shall determine what portion of the total is due to each local school administrative unit in the county and remit 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."

Section 2. This act becomes effective December 1, 1998, and applies to fines imposed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1252
PROPOSED COMMITTEE SUBSTITUTE (H1252-CSRB-1)

Short Title: Criminal Tax Penalty to Home County. (Public)

Sponsors:

Referred to: Judiciary I, if favorable, Finance.

May 12, 1998

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.

The General Assembly of North Carolina enacts:

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(b) Upon receipt of funds under this section, the county finance officer shall determine what portion of the total is due to each local school administrative unit in the county and remit 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."

Section 2. This act becomes effective December 1, 1998, and applies to fines imposed on or after that date.

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

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-452 reads as rewritten:

"**§ 115C-452. Fines and forfeitures.**

(a) The clear proceeds of all penalties and forfeitures and of all fines collected in the General Court of Justice in each county shall be remitted by the clerk of the superior court to the county finance ~~officer, who shall forthwith~~ officer. In the case of a criminal violation of Chapter 105 of the General Statutes, if the defendant was a resident of North Carolina when the offense was committed, the clerk shall 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.

(b) Upon receipt of funds under this section, the county finance officer shall determine what portion of the total is due to each local school administrative unit in the county and remit 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."

Section 2. This act becomes effective December 1, 1998.

EXPLANATION OF HOUSE BILL 1252:
(Proposed Committee Substitute)
Criminal Tax Penalty to Home County

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: May 28, 1998
SPONSOR: Rep. McCombs

House Bill 1252 provides that in criminal tax prosecutions, any criminal fine shall be remitted to the county of the defendant's residence rather than the county in which the crime is prosecuted. It would become effective December 1, 1998.

Section 7 of Article IX of the North Carolina Constitution provides that the proceeds of penalties, forfeitures, and fines collected "in the several counties" for any breach of the penal laws of the State shall belong to "the several counties" and shall be used only for public schools. The Constitution does not specify which county receives the proceeds of each fine, forfeiture, or penalty. In the case of a civil penalty or forfeiture collected by a State agency, the General Assembly has provided that the proceeds are allocated among all local school boards on the basis of average daily membership. G.S. 115C-457.1 through G.S. 115C-457.3. In the case of a penalty, forfeiture, or fine collected by a State court, the General Assembly has provided that the clerk of superior court shall remit the proceeds to the local finance officer for that county. The local finance officer then distributes the proceeds to the local school boards of that county on the basis of average daily membership. G.S. 115C-452. If a case is transferred from one county to the next, however, the proceeds are remitted by the clerk of court back to the first county. In re Dunlap, 66 N.C. App. 152, 155 (1984).

Most criminal cases are brought in the county where the crime was committed. In criminal tax cases, however, the prosecution generally takes place in Wake County rather than in the county in which the taxpayer resided. The Department of Revenue finds that it is more efficient to prosecute these cases, which are few in number, in Wake County than to travel throughout the state. Thus, Wake County receives the proceeds of most criminal tax cases that result in a fine. This bill provides that in these criminal tax cases, if the defendant resided in North Carolina when the crime was committed, the proceeds of any criminal fine will be directed to the county of residence rather than the county in which

the case is prosecuted. As a result of this bill, the Wake County clerk would occasionally be required to remit proceeds to other counties.

Technical Considerations:

1. The bill refers to criminal violations of Chapter 105. There are only three criminal violations in Chapter 105. Many of the criminal violations involving a tax imposed under Chapter 105 are enforced under Chapter 14: G.S. 14-91 (Embezzlement of State Property), G.S. 14-92 (Embezzlement of Funds), G.S. 14-100 (Obtaining Property by False Pretenses), G.S. 14-119 (Forgery), and G.S. 14-120 (Uttering Forged Paper). The Committee Substitute broadens the language of the bill to include all criminal offenses involving a tax imposed under Chapter 105.
2. The Committee Substitute directs the trial judge to determine the defendant's county of residence.
3. The Committee Substitute provides that the bill is applicable to fines imposed on or after the effective date, December 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1320

Short Title: Tax on Movies. (Public)

Sponsors: Representatives Cansler, Brawley, Capps, Gray, Hill, Neely, Ramsey, C. Wilson; Esposito and Starnes.

Referred to: Finance.

May 19, 1998

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE STATE PRIVILEGE TAX ON GROSS RECEIPTS FROM MOTION PICTURE SHOWS.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-38.1. Amusements - Motion picture shows.**

(a) Tax. -- A privilege tax at the rate of one percent (1%) is imposed on the gross receipts of a person who is engaged in the business of operating a motion picture show for which an admission is charged. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month. If a person offers an entertainment or amusement that includes both a motion picture taxable under this section and an entertainment or amusement taxable under G.S. 105-37.1 or G.S. 105-38, the tax in G.S. 105-37.1 or G.S. 105-38, as appropriate, applies to the entire gross receipts and the tax levied in this section does not apply.

(b) Exemption. -- Gross receipts from a motion picture show promoted and managed by a qualifying corporation that operates a center for the performing and visual arts is exempt from the tax imposed under this section if the motion picture is shown at the center and if the showing of motion pictures is not the primary purpose of the center. As used in this subsection, 'qualifying corporation' and 'center for the performing and visual arts' have the same meaning as in G.S. 105-37.1(a)."

Section 2. This act becomes effective October 1, 1998.

CRIMINAL INVESTIGATIONS DIVISION
CRIMINAL FINES

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

COUNTY	1995	1996	1997
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 FINES

COUNTY	1995	1996	1997
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	
TOTALS	*95,300.00*	*122,500.00*	*100,900.00*

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1320 (First Edition)

SHORT TITLE: Tax on Movies

SPONSOR(S): Representative Cansler, et al.

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	$1,525,657	$2,118,498	$2,225,021	$2,336,521	$2,452,998

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: October 1, 1998

BILL SUMMARY: The bill imposes a one percent gross receipts tax on motion picture shows instead of the three percent tax charged other entertainment or amusement.

BACKGROUND: When the privilege tax on motion picture shows was repealed on July 1, 1997, movies then became subject to the 3% gross receipts tax charged amusements and entertainment. However, the Department of Revenue chose not to assess this tax in FY 97-98 until the General Assembly clarified that the tax should be collected. The Department's uncertainty arose from the absence of debate by the 1996 General Assembly on the issue of imposing a gross receipt tax on movies.

ASSUMPTIONS AND METHODOLOGY:

A 1% gross receipts tax on movie admissions would generate approximately $1.5 million in General Fund revenue in FY 1998-99 if enacted on October 1, 1998. The estimate of gross receipts generated by North Carolina movie theaters in 1996 is based on data from the Motion Pictures Association of America. Nationwide, the box office gross was $5.9 billion on 1.3 billion tickets sold. The average admission price at the 29,690 movie screens across the country was $4.42. The average gross revenue per screen in 1996 was $199,107. The National

Association of Theater Owners reported 897 movie screens in North Carolina in 1996. Assuming NC theater gross revenues equal the national average, the 897 Tarheel screens produced $178.6 million in revenues in 1996. If a 1% gross receipts tax were applied, the state would have earned $1.78 million in taxes in 1996.

The number of NC screens has grown 5% a year since 1992, but gross revenue per screen has risen and fallen over the last five years. For estimating purposes, it is assumed that the number of movie screens will increase 5% a year, but there will be no increase in gross revenue per screen.

	NC Screens	Gross per screen	Gross revenue	1% tax
1996	897	$199,107	$ 178,598,979	$ 1,785,990
1997	942	$199,107	$ 187,558,794	$ 1,875,588
1998	989	$199,107	$ 196,916,823	$ 1,969,168
1999	1,038	$199,107	$ 206,673,066	$ 2,066,731
2000	1,090	$199,107	$ 217,026,630	$ 2,170,266
2001	1,145	$199,107	$ 227,977,515	$ 2,279,775
2002	1,202	$199,107	$ 239,326,614	$ 2,393,266
2003	1,262	$199,107	$ 251,273,034	$ 2,512,730

The chart below assumes an October 1, 1998 effective date for FY 1998-99. The remaining years are adjusted for fiscal years by taking half of one calendar year plus half of the next calendar year.

Fiscal Year	Revenue
1998-99	$ 1,525,657
1999-00	$ 2,118,498
2000-01	$ 2,225,021
2001-02	$ 2,336,521
2002-03	$ 2,452,998

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:

DATE: May 24, 1998

EXPLANATION OF HOUSE BILL 1320:
Tax on Movies

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 25, 1998
SPONSOR: Representatives Cansler, Brawley, Capps, Gray, Hill, Neely, Ramsey, C.Wilson, Esposito and Starnes.

House Bill 1320 is a recommendation of the Revenue Laws Study Committee and reduces the current 3% gross receipts tax on motion pictures to 1%, effective October 1, 1998. The Bill also clarifies that if a taxpayer offers an entertainment or amusement that includes both a motion picture and an entertainment or amusement that is subject to the 3% gross receipts tax, then the higher rate applies. The October 1, 1998, effective date would give the Department of Revenue time to print the forms and identify taxpayers. Sales tax would continue to be assessed on food and drink sold at motion picture shows.

The Bill clarifies the exemption of motion pictures that are shown at a center for the performing and visual arts that is promoted and managed by an organization organized for religious, charitable, scientific, literary, or educational purposes. The showing of the motion picture show may not be the primary purpose of the center. This exemption was set out in the privilege license statute on movies that was repealed , effective July 1, 1997.

History

The gross receipts tax on motion picture shows was first codified in 1939. The rate of this tax was the same as the sales tax rate. There was also an annual license tax assessed against motion picture shows, and this license tax was applied as a credit upon or advance payment of the gross receipts tax.

In 1943, the General Assembly repealed the gross receipts tax on motion picture shows, and assessed this tax only on other forms of entertainment not otherwise taxed or specifically exempted. The annual license tax continued to be imposed. In 1949, the General Assembly enacted a new statute, G.S. 105-37.1, that assessed an annual license tax and a gross receipts tax on amusements not otherwise taxed or specifically exempted. Since motion picture shows were paying a license tax, they were not subject to G.S. 105-37.1. In 1949, the General Assembly first taxed operating outdoor and drive-in motion picture shows. The tax was based upon population of the town and car capacity. In 1989, the General Assembly amended the privilege license tax on drive-ins by doing away

with the tax rate based upon population and car capacity and, instead, assessing a $100 privilege license tax.

During the Second Extra Session of the 1996 Session, a number of State privilege license taxes were repealed, including the privilege taxes on motion picture shows. The Revenue Laws Study Committee had recommended to the 1995 General Assembly that most of the State privilege license taxes imposed under Article 2 of Chapter 105 of the General Statutes be repealed, effective July 1, 1997. The State privilege license taxes on motion picture shows that were repealed were the following:

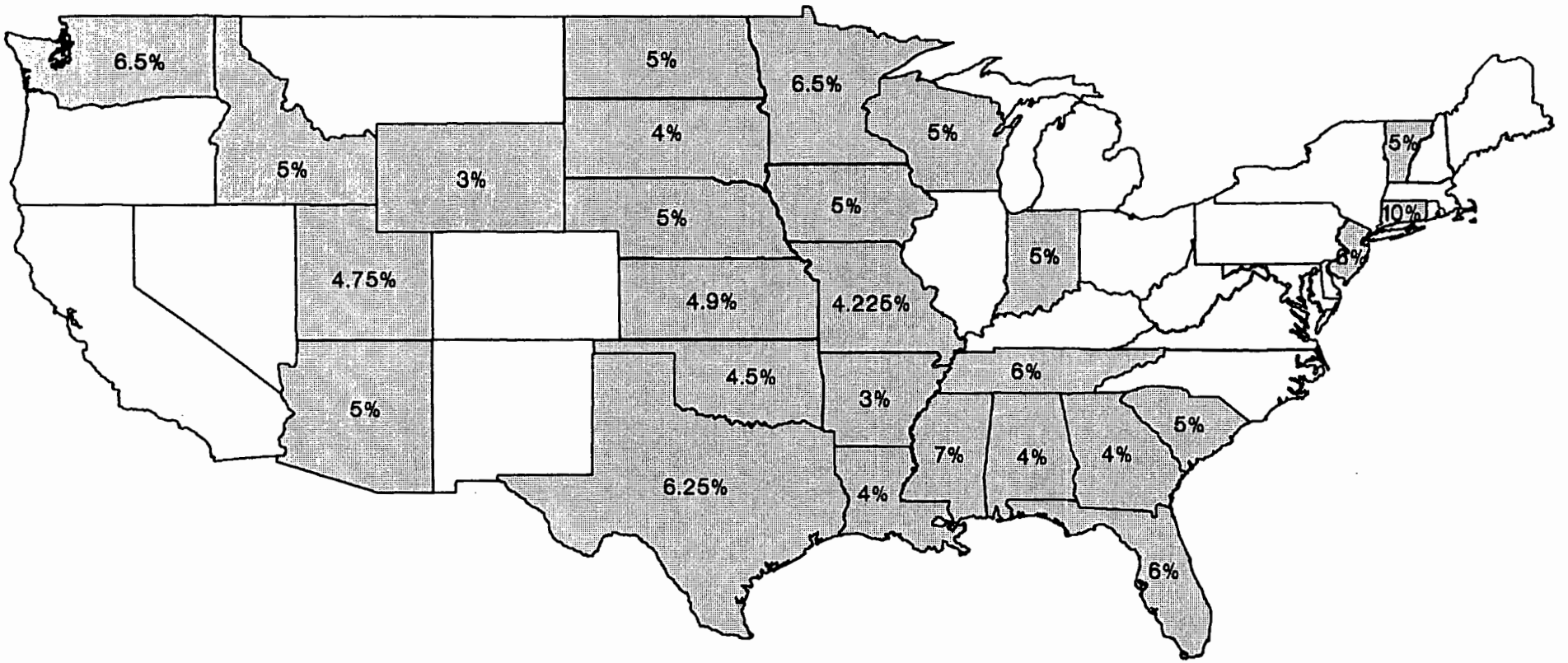
- G.S. 105-36 - Required those engaged in the business of manufacturing, selling, leasing, furnishing and/or distributing films which an admission fee was charged to apply for a privilege license and pay a tax thereon of $625 a year.
- G.S. 105-36.1 - Required those engaged in the business of operating an outdoor or drive-in moving picture show for compensation to apply for a privilege license and a pay a tax thereon of $100 a year.
- G.S. 105-37 - Required those engaged in the business of operating a moving picture show for compensation to apply for a license and pay $200 for each room, hall, or tent used. Only half the tax was required if the motion picture show operated three days or less each week.

When the foregoing statutes were repealed, effective July 1, 1997, motion picture shows fell into the category of amusements not otherwise taxed as set out in G.S. 105-37.1 and, therefore, subject to the 3% gross receipts tax and the $50.00 annual license tax assessed in that statute. However, the Department of Revenue did not begin assessing motion picture shows a gross receipts tax when the privilege license taxes were repealed. The Department believed that when the General Assembly repealed these license taxes, it did not intend to assess any tax on motion picture shows. During the 1996 Session, there appears to have been no discussion of a gross receipts tax on theaters, if the privilege tax was repealed.

The Commerce Clearing House State Tax Guide shows that 27 states tax movie admissions in one fashion or another. (see attached map). Twenty-one states simply apply their sales tax to theater admissions. Alabama and Arkansas have a specific gross receipts tax on movie admissions, while Connecticut and South Carolina have a general admissions tax. Arizona has a transaction privilege tax on theaters and Indiana has a gross income tax on theaters. Twenty-five of these twenty-seven states have movie taxes higher than North Carolina's 3% gross receipts tax. Eleven of the states that tax movie admissions are members of the Southern Legislative Conference.

Staff's research also found that North Carolina's policy of taxing movie concessions is consistent with other states and the District of Columbia.

STATE TAX ON MOVIE ADMISSIONS



Source: CCH (Commerce Clearing House Inc.) State Tax Guide

VISITOR REGISTRATION SHEET

House Finance — May 27, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Denny Rogers	NCDOT
Billy Daniel	DOR
Jay Hare	DOR
Patti Sowell	DOR
TOM DIXON	DOR
Matt Osborne	AOC
Cam Cire	BPMHL
Bernard Allen	SOS
SAM JOHNSON	ATTY
Alice Garland	Electricities
Jim Upchurch	CPTL
Ed Regan	N.C. Assoc. of Co. Comm.

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jim Lofton	NCAFI
Leslie Bevacqua	NCCBI
Thomas J Hamilton	Hamilton consulting
Richard Barnett	Gov. Office
Gary Hancock	EGHS
Lisa Riley	Capitol Group
Lynn Lee	IBM
Clifton B Metcalf	UNC GA
Stephen W Keene	NC Med. Soc.
Joyce Peters	JP Assoc.
Susan Markham	EGHS
David Simmons	ZDA, PA

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Eric Beaver	NLHBA Rowan Home builders Assoc.
KATHY SHORT	NCHBA SALISBURY - ROWAN
Jerry B Short	NCHBA 1235 CORRIHER SPRINGS RD SALIS ROWAN CHINA GROVE, NC 28023
MAC BUTNER	SALISBURY-ROWAN HBA POB 1334, SALISBURY, NC 28145
Rob Schild	NCIDC
Mona Munchhoff	Poyner + Spruill
Kelly Tingle	Rep. Crawford's Intern.

CRIMINAL INVESTIGATIONS DIVISION
CRIMINAL FINES

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

COUNTY	1995	1996	1997
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

COUNTY	1995	1996	1997
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	
TOTALS	95,300.00	122,500.00	100,900.00

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, MAY 27, 1998

8:00 A.M. ROOM 544-LOB

The House Committee on Finance met on Wednesday, May 27, 1998 at 8:00 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Rep. Gray called the meeting to order.

SB-1092 ELIMINATE STATE FOOD TAX

Discussion continued from the Tuesday meeting. Rep. Gray advised members that a new Proposed Committee Substitute had been prepared to include the amendments that had been adopted from the Tuesday meeting. Rep. Luebke asked for an overview from Fiscal Staff. Mr. David Crotts responded.

Rep. Capps had sent forth an amendment at the Tuesday meeting. Chairman Gray called for a vote and the amendment passed.

Rep. Daughtry moved for a favorable report, as amended. Sen. Hoyle was recognized for follow-up remarks. He provided a budget simulation (copy attached) and explained. Rep. Luebke and Rep. Hunter made additional comments regarding the bill.

The vote was taken on SB-1092 and passed with a favorable report to House Committee Substitute bill, as unfavorable to the Senate bill, with a title change.

Rep. Gray turned the gavel over to Rep. Wilson to chair the remainder of the meeting.

HB-1077 MASSAGE AND BODYWORK THERAPY

Rep. Dickson moved for adoption of the new PCS for discussion. Rep. Clary refreshed members of this bill from the Thursday, May 21st meeting. Rep. Womble asked clarifying questions of the bill sponsor. She responded and asked that Mr. Rick Rosen, Massage Therapy Association be recognized to speak also. Mr. Rosen assisted in addressing questions. Rep. Gamble also asked questions then spoke in favor of the bill. Rep. Hunter had questions regarding county control of regulations and Ms. Martha Walston, Fiscal Research Division responded. Rep. McComas and Rep. Starnes asked clarifying questions which Ms. Walston addressed. Rep. Capps questioned a separate license for the individual therapist and the business establishment. Mr. Rosen addressed this issue. Rep. Baddour shared concerns from one of his constituents and

Rep. Clary responded to his concerns. Rep. Wood, and Rep. Cunningham had questions and comments. Mr. Rosen and Rep. Clary addressed these. Rep. Miller asked if this was eligible for the 1998 Short Session. Chairman Wilson advised that the Rules Chairman had been consulted on this bill and it was ruled that it was eligible for this session. Rep. Miller then continued with questions and comments. Rep. Clary and Ms. Walston responded.

Rep. Dickson moved for a favorable report to the PCS, as unfavorable to the original bill.

Chairman Wilson advised full discussion would continue. Several members had indicated their desire to speak and two amendments had been sent forth.

Rep. Hightower continued the discussion. Rep. Clary responded to his comments. Rep. Goodwin again questioned the eligibility of the bill and moved for adjournment. Chairman Wilson again gave the ruling on the bill and took the vote to adjourn. Motion failed and discussion continued.

Rep. Hensley inquired of the opposing side and was advised that everyone would be given an opportunity to speak on this issue. Rep. Decker questioned staff and Ms. Walston responded.

Chairman Wilson announced we would adjourn at 9:30 and continue discussion after session this afternoon.

Meeting adjourned at 9:30.

The meeting was called back to order at 2:40 by Rep. Connie Wilson.

Rep. Clary was asked to speak on her bill, HB-1077. Rep. Clary asked that the bill be removed from the agenda until further details could be worked out.

Chairman Wilson announced the Thursday meeting at 9:00.
Meeting adjourned at 2:45.

Rep. Lyons Gray, Chairman

Rep. C. Wilson, Chairman

Cindy Brooks, Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1077
Proposed Committee Substitute H1077-PCSLA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Massage and Bodywork Therapy. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT REGULATING THE PRACTICE OF MASSAGE AND BODYWORK THERAPY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 36.

"Massage and Bodywork Therapy Practice.

"§ 90-620. Short title.

This Article shall be known as the North Carolina Massage and Bodywork Therapy Practice Act.

"§ 90-621. Declaration of purpose.

The General Assembly recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapy is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.

"§ 90-622. Definitions.

The following definitions apply in this Article:

(1) Board. -- The North Carolina Board of Massage and Bodywork Therapy.

(2) Board-approved school. -- Any massage and bodywork therapy school or training program in this State or another state that has met the criteria established by the Board.

(3) Massage and bodywork therapy. -- Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:

a. Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.

b. Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.

c. The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.

(4) Massage and bodywork therapist. -- A person licensed under this Article.

(5) Practice of massage and bodywork therapy. -- The application of massage and bodywork therapy to any person for a fee or other consideration. 'Practice of massage and bodywork therapy' does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"**§ 90-623. License required.**

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including 'massage therapist', 'bodywork therapist', 'masseur', 'masseuse', 'massagist', 'somatic practitioner', 'body therapist', 'structural integrator', or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term 'massage therapist' or 'bodywork therapist' or any other term that implies

a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title 'Licensed Massage and Bodywork Therapist'. No other person shall assume this title or use an abbreviation or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

"**§ 90-624. Exemptions.**

Nothing in this Article shall be construed to prohibit or affect:

(1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.

(2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(3) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under this Article.

(4) Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.

(5) A person giving massage and bodywork therapy to members of that person's immediate family.

(6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

(7) The practice of techniques that are specifically intended to affect the human energy field.

"**§ 90-625. North Carolina Board of Massage and Bodywork Therapy.**

(a) The North Carolina Board of Massage and Bodywork Therapy is created. The Board shall consist of seven members who are residents of this State and are as follows:

(1) Five members shall be massage and bodywork therapists who have been licensed under this Article and have been in the practice of massage and bodywork therapy for at least five of the last seven years prior to their serving on the Board. The appointments shall be made from lists provided by those covered in this Article. Consideration shall be given to geographical distribution, practice setting, clinical specialty, and other factors that will promote diversity of the profession on the Board. One of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and three shall be appointed by the Governor.

(2) The remaining two members shall be members of the general public who shall not be licensed under this Article or the spouse of a person who is so licensed, or have any financial interest, direct or indirect, in the profession regulated. These two members shall be appointed by the Governor.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member of the Board shall serve for a term of three years, ending on June 30 of the last year of the term. A member shall not be appointed to serve more than two consecutive terms.

(d) The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business but no less than twice a year. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a

licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

"**§ 90-626. Powers and duties.**

The Board shall have the following powers and duties:

(1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage and bodywork therapy practice.

(2) Evaluate the qualifications of applicants for licensure under this Article.

(3) Issue, renew, deny, suspend, or revoke licenses under this Article.

(4) Reprimand or otherwise discipline licensees under this Article.

(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.

(7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.

(8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.

(9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board, including rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapy establishments. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.

(10) Appoint from its own membership one or more members to act as representatives of the Board at any

meeting where such representation is deemed desirable.

(11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.

(12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.

(13) Provide a system for grievances to be presented and resolved.

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective.

"**§ 90-627. Custody and use of funds.**

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article.

"**§ 90-628. Expenses and fees.**

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the General Fund.

(b) The Board may impose the following fees up to the amounts listed below:

(1)	Application for examination	$200.00
(2)	License fee	150.00
(3)	License renewal	100.00
(4)	Late renewal penalty	75.00
(5)	License by reciprocity	100.00
(6)	Duplicate license	25.00
(7)	Provisional license	150.00.

"**§ 90-629. Requirements for licensure.**

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

(1) Has obtained a high school diploma or equivalent.

(2) Is 18 years of age or older.

(3) Is of good moral character as determined by the Board.

(4) Has successfully completed a course of study consisting of a minimum of 500 classroom hours of supervised instruction at a Board-approved school.

(5) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board.

"**§ 90-630. Reciprocity.**

(a) An applicant shall be eligible for licensure if (i) the applicant has been licensed in another state within five years of the application to the Board and the other state has standards for massage and bodywork therapists that are substantially equivalent to those in this State; (ii) the applicant holds a current certification from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets NCCA standards; or (iii) the applicant meets special requirements established by the Board.

(b) Upon receipt of an application for reciprocity, the Board shall contact each jurisdiction that has previously certified or licensed the applicant to determine whether there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

(c) Reciprocity may not be granted if the state in which the applicant is licensed has not granted a similar reciprocity to licensees in this State.

"**§ 90-631. Massage and bodywork therapy schools.**

The Board shall establish rules for the approval of massage and bodywork therapy schools. These rules shall include:

(1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapy.

(2) Standards for faculty and learning resources.

(3) Requirements for reporting changes in instructional staff and curriculum.

(4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapy may make application for approval to the Board.

The Board shall grant approval to schools, whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved schools.

"**§ 90-632. License renewal and continuing education.**

The license to practice under this Article shall be renewed every two years. When renewing a license, each licensee shall submit to the Board evidence of the successful completion of at least 25 hours of study, as approved by the Board, during the immediately preceding two years, in the practice of massage and bodywork therapy.

"**§ 90-633. Disciplinary action.**

The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) The use of drugs or intoxicating liquors to an extent that affects professional competency.

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.

(4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.

(5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules.

(7) The commission of an act of malpractice, gross negligence, or incompetency.

(8) Practice as a licensee under this Article without a valid certificate or renewal.

(9) Engaging in conduct that could result in harm or injury to the public.

(10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapy without successfully completing training approved by the Board in that specialty.

"**§ 90-634. Enforcement; injunctive relief.**

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

(1) Practice of massage and bodywork therapy.

(2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.

(3) Use any title descriptive of any branch of massage and bodywork therapy, as provided in G.S. 90-623, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action.

"**§ 90-635. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article.

"**§ 90-636. Regulation by county or municipality.**

Nothing in this Article shall be construed to prohibit a county or municipality from regulating persons covered by this Article, however, a county or municipality may not impose regulations that are inconsistent with this Article."

Section 2. Notwithstanding the provisions of G.S. 90-625(a), as enacted in Section 1 of this act, the terms of initial appointments to the North Carolina Board of Massage and Bodywork Therapy shall be as follows:

(1) The terms of the three members appointed by the Governor pursuant to G.S. 90-625(a)(1), as enacted in Section 1 of this act, shall expire June 30, 2001.

(2) The terms of all other members shall expire June 30, 2000.

Section 3. The five initial appointments to the North Carolina Board of Massage and Bodywork Therapy pursuant to G.S. 90-625(a)(1), as enacted in Section 1 of this act, shall satisfy all of the provisions of G.S. 90-625(a)(1), except the licensure requirement, and shall satisfy the provisions of G.S. 90-629(1)

through (4), as enacted in Section 1 of this act, except the 500 classroom hours of supervised instruction does not have to be in a curriculum that meets the basic guidelines established by the North Carolina Board of Massage and Bodywork Therapy.

Section 4. If an applicant does not meet the educational or examinations requirements in G.S. 90-629(4) and (5), as enacted in Section 1 of this act, then for a maximum period of two years after the effective date of this act, the Board may permanently waive those requirements and grant a provisional license to the applicant. At the end of two years after the granting of the provisional license, the applicant shall submit evidence to the Board of his or her compliance with the continuing education requirements in G.S. 90-632, as enacted in Section 1 of this act. Upon receipt of proper documentation, the applicant shall be issued a license to practice massage and bodywork therapy. An applicant for a provisional license shall meet the requirements set forth in G.S. 90-629 (1) through (3), as enacted in Section 1 of this act, and shall submit all of the following for consideration by the Board:

(1) Documentation that the applicant has been engaged in the professional practice of massage and bodywork therapy for a minimum of four years prior to the application to the Board.

(2) Documentation of a minimum of 500 hours of professional practice in the field of massage and bodywork therapy during the four years prior to the application to the Board.

(3) Verification that the applicant has been practicing in the State at the time the application is submitted.

(4) Three letters of reference from sources approved by the Board attesting to the sound moral character, professional qualifications, and competence of the applicant.

Section 5. This act becomes effective October 1, 1998, and applies to offenses occurring on or after that date.

EXPLANATION OF HOUSE BILL 1077 (PCSLA - 001):
Massage and Bodywork Therapy

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 26, 1998
SPONSOR: Representative Clary

The PCS for House Bill 1077 creates the "North Carolina Massage and Bodywork Therapy Practice Act." The Act's purpose is to require mandatory licensure of persons engaged in the practice of massage and bodywork therapy to ensure minimum standards of competency and to protect the public health, safety, and welfare. Under current law, a "massage business" is covered by the criminal laws for adult establishments, and is considered an adult establishment if it is "any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors." The only other statutory references to massage is language exempting simple massages and the operation of health clubs from licensure under the physical therapy act and language including massage as an adjunctive therapy under acupuncture.

The Act prohibits persons from practicing or holding themselves out as massage and bodywork therapists without licensure from the newly created North Carolina Board of Massage and Bodywork Therapy. The Act defines "massage and bodywork therapy" as systems of activities applied to soft tissues of the body for therapeutic, educational, or relaxation purposes. The Act also prohibits a person from adopting or using any title or description including "massage therapist", "bodywork therapist", "masseur", "masseuse", "massagist", "somatic practitioner", "body therapist", "structural integrator", or any derivation of those terms unless the person is licensed under the Act.

The practice does not include: diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

The Act does not prohibit: the practice of a profession by one licensed, certified or registered under other N.C. laws, the practice of massage and bodywork therapy by a person licensed elsewhere when that person is called into the State to teach a course or to consult with a person licensed under the Act, students enrolled in a Board approved school and completing a clinical

requirement under the supervision of a licensed person, a person giving therapy to members of the person's immediate family, and the practice of movement educators such as dance teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

The requirements of licensure are:

- •high school diploma or equivalent
- •18 years or older
- •good moral character as determined by the Board
- •successful completion of a minimum of 500 classroom hours of supervised instruction at a Board approved school
- •passing an examination administered by an agency approved by the National Commission of Certifying Agencies or an examination administered or approved by the Board.

The schedule of fees for licensure may be no more than the following amounts:

(1)	Application for examination	$200.00
(2)	License fee	150.00
(3)	License renewal (every two years)	100.00
(4)	Late renewal penalty	75.00
(5)	License by reciprocity	100.00
(6)	Duplicate license	25.00
(7)	Provisional license	150.00

Salaries, expenses, or other Board obligations will be paid out of the above fees.

The Board consists of seven members: five to be licensed under the Article and with at least five years' experience, except that the initial five do not have to be licensed or have completed 500 hours of the required supervised instruction. The remaining two members will be from the general public.

The Act sets out powers and duties of the Board and lists reasons a Board may deny, suspend, revoke, or refuse a license. The Board may seek to enjoin anyone who violates the Act. There is no requirement for direct third-party reimbursement to licensees.

For two years after effective date of the Act, a provisional license may be granted to an applicant who does not meet educational or examination requirements for licensure. At the end of two years after the granting of the provisional license, the applicant must submit evidence of compliance with the continuing education requirements (at least 25 hours of study). The applicant will then be issued a license.

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Massage and Bodywork Therapy

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 26, 1998
SPONSOR: Representative Clary

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The Act does not prohibit: the practice of a profession by one licensed, certified or registered under other N.C. laws, the practice of massage and bodywork therapy by a person licensed elsewhere when that person is called into the State to teach a course or to consult with a person licensed under the Act, students enrolled in a Board approved school and completing a clinical

requirement under the supervision of a licensed person, a person giving therapy to members of the person's immediate family, and the practice of movement educators such as dance teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

The requirements of licensure are:

- high school diploma or equivalent
- 18 years or older
- good moral character as determined by the Board
- successful completion of a minimum of 500 classroom hours of supervised instruction at a Board approved school
- passing an examination administered by an agency approved by the National Commission of Certifying Agencies or an examination administered or approved by the Board.

The schedule of fees for licensure may be no more than the following amounts:

(1)	Application for examination	$200.00
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The Act sets out powers and duties of the Board and lists reasons a Board may deny, suspend, revoke, or refuse a license. The Board may seek to enjoin anyone who violates the Act. There is no requirement for direct third-party reimbursement to licensees.

For two years after effective date of the Act, a provisional license may be granted to an applicant who does not meet educational or examination requirements for licensure. At the end of two years after the granting of the provisional license, the applicant must submit evidence of compliance with the continuing education requirements (at least 25 hours of study). The applicant will then be issued a license.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1092
Proposed House Committee Substitute S1092-PCS6826

Short Title: Reduce North Carolina Taxes. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE STATE SALES TAX ON FOOD, TO ELIMINATE THE STATE'S INHERITANCE TAX AND RETAIN A STATE ESTATE TAX EQUAL TO THE FEDERAL STATE DEATH TAX CREDIT, TO INCREASE AND INDEX THE INDIVIDUAL INCOME TAX PERSONAL EXEMPTION AMOUNT, TO INCREASE THE PROPERTY TAX HOMESTEAD EXEMPTION AMOUNT AND INCOME ELIGIBILITY AMOUNT AND REIMBURSE LOCAL GOVERNMENTS FOR THE RESULTING REVENUE LOSS, TO EXPAND THE STATE CORPORATE INCOME TAX DEDUCTION FOR CHARITABLE CONTRIBUTIONS, TO INCREASE THE INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS BY NONITEMIZERS, AND TO REPEAL THE GIFT TAX.

The General Assembly of North Carolina enacts:

REPEAL STATE SALES TAX ON FOOD.

Section 1. G.S. 105-164.4(a)(5) is repealed.

Section 2. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.13B. Food exempt from tax.**

The taxes imposed by this Article do not apply to food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased under the Food Stamp Program, 7 U.S.C. § 51."

ELIMINATE NORTH CAROLINA INHERITANCE TAX.

Section 3. Article 1 of Chapter 105 of the General Statutes is repealed.

Section 4. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Estate Taxes.

"§ 105-32.1. Definitions.

The following definitions apply in this Article:

(1) Code. -- Defined in G.S. 105-228.90.

(2) Personal representative. -- The person appointed by the clerk of superior court under Chapter 28A of the General Statutes to administer the estate of a decedent or, if no one is appointed under that Chapter, the person required to file a federal estate tax return for the estate of the decedent.

(3) Secretary. -- Defined in G.S. 105-228.90.

"§ 105-32.2. Estate tax imposed in amount equal to federal state death tax credit.

(a) Tax. -- An estate tax is imposed on the estate of a decedent when a federal estate tax is imposed on the estate under section 2001 of the Code and any of the following apply:

(1) The decedent was a resident of this State at death.

(2) The decedent was not a resident of this State at death and owned any of the following:

a. Real property or tangible personal property that is located in this State.

b. Intangible personal property that has a tax situs in this State.

(b) Amount. -- The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the Code. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate.

"§ 105-32.3. Liability for estate tax.

(a) Primary. -- The tax imposed by this Article is payable from the assets of the estate. A person who receives property from an estate is liable for the amount of estate tax attributable to that property.

(b) Personal Representative. -- The personal representative of an estate is liable for an estate tax that is not paid within two years after it was due. This liability is limited to the value of the assets of the estate that were under the control of the personal representative. The amount for which the personal representative is liable may be recovered from the personal representative or from the surety on any bond filed by the personal representative under Article 8 of Chapter 28A of the General Statutes.

(c) Clerk of Court. -- A clerk of court who allows a personal representative to make a final settlement of an estate without presenting one of the following is liable on the clerk's bond for any estate tax due:

(1) An affirmation by the personal representative certifying that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.

(2) A certificate issued by the Secretary stating that the tax liability of the estate has been satisfied.

"§ 105-32.4. Payment of estate tax.

(a) Due Date. -- The estate tax imposed by this Article is due when an estate tax return is due. An estate tax return is due on the date a federal estate tax return is due.

(b) Filing Return. -- An estate tax return must be filed under this Article if a federal estate tax return is required. The return must be filed by the personal representative of the estate on a form provided by the Secretary.

(c) Extension. -- An extension of time to file a federal estate tax return is an automatic extension of the time to file an estate tax return under this Article. The Secretary may, in accordance with G.S. 105-263, extend the time for paying the estate tax imposed by this Article or for filing an estate tax return.

(d) Interest and Penalties. -- The penalties in G.S. 105-236 apply to the failure to file an estate tax return or to pay an estate tax when due. Interest at the rate set in G.S. 105-241.1 accrues on estate taxes paid after the date they are due.

(e) Obtaining Amount Due. -- The personal representative of an estate may sell assets in the estate to obtain money to pay the tax imposed by this Article.

"§ 105-32.5. Making installment payments of tax due when federal estate tax is payable in installments.

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal estate tax under section 6166 of the Code. Acceleration of payments under section 6166 of the Code accelerates the payments due under this section.

"§ 105-32.6. Estate tax is a lien on real property in the estate.

The tax imposed by this Article on an estate is a lien on the real property in the estate and on the proceeds of the sale of the real property in the estate. The lien is extinguished when one of the following occurs:

(1) The personal representative certifies to the clerk of court that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.

(2) The Secretary issues a certificate stating that the tax liability of the estate has been satisfied.

(3) For specific real property, when the Secretary issues a tax waiver for that property.

(4) Ten years have elapsed since the date of the decedent's death.

"**§ 105-32.7. Generation-skipping transfer tax.**

(a) Tax. -- A tax is imposed on a generation-skipping transfer that is subject to the tax imposed by Chapter 13 of Subtitle B of the Code when any of the following apply:

(1) The original transferor is a resident of this State at the date of the original transfer.

(2) The original transferor is not a resident of this State at the date of the original transfer and the transfer includes any of the following:

a. Real or tangible personal property that is located in this State.

b. Intangible personal property that has a tax situs in this State.

(b) Amount. -- The amount of the tax imposed by this section is the maximum credit for state generation-skipping transfer taxes allowed under section 2604 of the Code. If property in the transfer is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the original transferor was a resident of this State at the date of the original transfer, the North Carolina percentage is the net value of the property transferred that does not have a tax situs in another state, divided by the net value of all property transferred. If the original transferor was not a resident of this State at the date of the original transfer, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property transferred, unless the original transferor's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the original transferor's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in a transfer is its gross value reduced by any debts secured by the property.

(c) Payment. -- The tax imposed by this section is due when a return is due. A return is due the same date as the federal return for payment of the federal generation-skipping transfer tax. The tax is payable by the person who is liable for the federal generation-skipping transfer tax.

"§ 105-32.8. Federal determination that changes the amount of tax payable to the State.

If the federal government corrects or otherwise determines the amount of the maximum state death tax credit allowed an estate under section 6166 of the Code, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within two years after being notified of the correction or final determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

PROPERTY TAX HOMESTEAD EXEMPTION.

Section 5. G.S. 105-277.1(a) reads as rewritten:

"(a) Exclusion. -- The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The first ~~twenty thousand dollars ($20,000)~~ twenty-five thousand dollars ($25,000) in appraised value of a permanent residence owned and occupied by a qualifying owner is excluded from taxation. A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than ~~fifteen thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000).

(3) Is a North Carolina resident.

An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent."

Section 6. G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first ~~twenty thousand dollars ($20,000)~~ twenty-five thousand dollars ($25,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed ~~fifteen thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above ~~fifteen thousand dollars ($15,000),~~ twenty-five thousand dollars ($25,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 7. G.S. 105-277.1A reads as rewritten:

"**§ 105-277.1A. Property classified for taxation at reduced valuation; duties of tax collectors; reimbursement of localities for portion of tax lost.**

(a) On September 1, 1990, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue a list containing the name and address of each person who has qualified in that year for the exemption provided in G.S. 105-277.1. The list shall also contain for each name the total amount of property exempted, the tax rate the property is subject to, and the product obtained by multiplying those two numbers by each other. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall all be on a form prescribed by the Secretary of Revenue.

(a1) On December 1, 1997, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above eleven thousand dollars ($11,000) and the second list shall include those taxpayers whose income was eleven thousand dollars ($11,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above fifteen thousand dollars ($15,000) exempted. On both lists, the tax collector shall provide the tax rate the property is subject to and the product

obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(a2) On December 1, 1999, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above fifteen thousand dollars ($15,000), and the second list shall include those taxpayers whose income was fifteen thousand dollars ($15,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above twenty thousand dollars ($20,000) exempted. On both lists, the tax collector shall provide the tax rate the property is subject to and the product obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 15.1(c).

(c) The Secretary of Revenue may, for cause, grant an extension for the submission of a list required by this section.

(d) Before May 31, 1991, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for the entire list provided pursuant to subsection (a) of this section of the product obtained by multiplying the tax exemption for each taxpayer times the applicable tax rate. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city that was entitled to receive a distribution under this subsection in 1991 the amount it was entitled to receive in 1991.

(d1) Before May 31, 1998, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for both lists provided the preceding December 1 pursuant to subsection (a1) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Before May 31, 1999, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 1998.

(d2) Before May 31, 2000, the Secretary of Revenue shall distribute to the county or city the total for both lists provided the preceding December 1 pursuant to subsection (a2) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 2000.

(e) Any funds received by any county or city pursuant to this section because the county or city was collecting taxes for another unit of government or special district shall be credited to the funds of that other unit or district in accordance with regulations issued by the Local Government Commission.

(f) In order to pay for the reimbursement under this section and the cost to the Department of Revenue of administering the reimbursement, the Secretary of

Revenue shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the reimbursement and the cost of administration."

INCREASE AND INDEX PERSONAL EXEMPTIONS.

Section 8. G.S. 105-134.6(c)(4a) is repealed.

INCREASE CHARITABLE GIVING.

Section 9. G. S. 105-130.9 reads as rewritten:

"**§ 105-130.9. Contributions.**

~~Contributions shall be allowed as a deduction to the extent and in the manner provided as follows:~~ (a) North Carolina Corporations. -- Corporations that do not allocate a part of their total net income outside this State may deduct the following contributions to the extent allowed in this section:

(1) Most Charitable Contributions. -- Charitable contributions as defined in section 170(c) of the Code, ~~exclusive of~~ other than contributions allowed in subdivision (2) of this section, ~~shall be allowed as a deduction to the extent provided herein. The amount allowed as a deduction hereunder shall be limited to an amount not in excess of five percent (5%)~~ up to a maximum deduction of ten percent (10%) of the corporation's net income as computed without the benefit of this subdivision or subdivision (2) of this section. ~~Provided, that a carryover of contributions shall not be allowed and that contributions made to North Carolina donees by corporations allocating a part of their total net income outside this State shall not be allowed under this subdivision, but shall be allowed under subdivision (3) of this section.~~

(2) Contributions to North Carolina Governments and Educational Institutions. -- Contributions ~~by any corporation~~ to the following entities: the State of North Carolina, any of its institutions, instrumentalities, or agencies, any county of this State, its institutions, instrumentalities, or agencies, any municipality of this State, its institutions, instrumentalities, or agencies, and ~~contributions or gifts by any corporation to~~ any educational institutions located within North Carolina, no part of the net earnings of which inures to the benefit of any private stockholders or dividend. For the purpose of this subdivision, the ~~words~~ term 'educational institution' ~~shall mean~~ includes only an educational institution ~~which~~ that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where the educational activities are carried on. The ~~words 'educational institution' shall be deemed to include all of such~~ term includes all of the institution's departments, ~~schools~~ schools, and colleges, a group of ~~'educational institutions'~~ educational institutions, and an organization ~~(corporation, trust, foundation, association or other entity)~~ organized and operated exclusively to receive, hold, ~~invest~~ invest,

and administer property and to make expenditures to or for the sole benefit of an ~~'educational institution' or group of 'educational institutions.'~~ educational institution.

~~(3)~~

(b) Interstate Corporations. -- Corporations allocating a part of their total net income outside North Carolina under ~~the provisions of~~ G.S. 105-130.4 ~~shall~~ may deduct from total income allocable to North Carolina contributions made to North Carolina donees qualified under ~~subdivisions (1) and (2) of this section~~ subdivision (1) or (2) of subsection (a) of this section or made through North Carolina offices or branches of other donees qualified under ~~the above-mentioned~~ those ~~subdivisions of this section; provided, such~~ subdivisions. The deduction for contributions made to North Carolina donees qualified under subdivision (1) of this section ~~shall be limited in amount to five percent (5%)~~ may not exceed ten percent (10%) of the total income allocated to North Carolina as computed without the benefit of this ~~deduction for contributions.~~ subsection.

Corporations allocating a part of their total net income outside North Carolina may deduct from net income before allocation under G.S. 105-130.4 contributions made to other donees qualified under subdivision (1) of subsection (a) of this section. This deduction may not exceed ten percent (10%) of the corporation's net income before allocation under G.S. 105-130.4, as computed without the benefit of this subsection.

(c) Carryforward. -- If a corporation's deductions allowed under subdivision (a)(1) or subsection (b) of this section exceed the applicable percentage limitation, the corporation may carry the excess forward for the succeeding five years to the extent the amounts carried forward under this subsection plus the amounts deductible under subdivision (a)(1) or subsection (b) of this section for each taxable year do not exceed the percentage limitation for that taxable year. Amounts deductible under subdivision (a)(1) or subsection (b) of this section for the current taxable year shall be taken into account before amounts carried forward under this subsection.

~~(4)~~ ~~The~~

(d) Double Benefit Disallowed. -- The amount of a contribution for which the taxpayer claimed a tax credit pursuant to G.S. 105-130.34 shall not be eligible for a deduction under this section. The amount of the credit claimed with respect to the contribution is not, however, required to be added to income under G.S. 105-130.5(a)(10)."

Section 10. G.S. 105-130.5(b)(5) reads as rewritten:

"(5) Contributions or gifts made by any corporation ~~within the income year~~ to the extent provided under G.S. 105-130.9."

Section 11. G.S. 105-151.26 reads as rewritten:

"§ 105-151.26. Credit for charitable contributions by nonitemizers.

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Division an amount equal to ~~two and three-fourths percent (2.75%)~~ seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable

contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

REPEAL STATE GIFT TAX.

Section 11.1. Article 6 of Chapter 105 of the General Statutes is repealed.

EFFECTIVE DATES.

Section 12. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that was available under the amended or repealed statute before the effective date of its amendment or repeal.

Section 13. Sections 1 and 2 of this act become effective October 1, 1998, and apply to sales made on or after that date. Sections 3 and 4 of this act become effective January 1, 1999, and apply to the estates of decedents dying on or after that date. Sections 5 through 7 of this act are effective for taxes imposed for taxable years beginning on or after July 1, 1999. Sections 8 through 11 of this act are effective for taxable years beginning on or after January 1, 1999. Section 11.1 of this act becomes effective January 1, 1999, and applies to gifts made on or after that date. The remainder of this act is effective when it becomes law.

5/27/98
attachments

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1092
Proposed House Committee Substitute S1092-PCS7973

Short Title: Reduce North Carolina Taxes. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE STATE SALES TAX ON FOOD, TO ELIMINATE THE STATE'S INHERITANCE TAX AND RETAIN A STATE ESTATE TAX EQUAL TO THE FEDERAL STATE DEATH TAX CREDIT, TO INCREASE AND INDEX THE INDIVIDUAL INCOME TAX PERSONAL EXEMPTION AMOUNT, TO INCREASE THE PROPERTY TAX HOMESTEAD EXEMPTION AMOUNT AND INCOME ELIGIBILITY AMOUNT AND REIMBURSE LOCAL GOVERNMENTS FOR THE RESULTING REVENUE LOSS, TO EXPAND THE STATE CORPORATE INCOME TAX DEDUCTION FOR CHARITABLE CONTRIBUTIONS, AND TO INCREASE THE INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS BY NONITEMIZERS.

The General Assembly of North Carolina enacts:

REPEAL STATE SALES TAX ON FOOD.

Section 1. G.S. 105-164.4(a)(5) is repealed.

Section 2. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.13B. Food exempt from tax.**

The taxes imposed by this Article do not apply to food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased under the Food Stamp Program, 7 U.S.C. § 51."

ELIMINATE NORTH CAROLINA INHERITANCE TAX.

Section 3. Article 1 of Chapter 105 of the General Statutes is repealed.

Section 4. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.
"Estate Taxes.

"**§ 105-32.1. Definitions.**

The following definitions apply in this Article:

(1) Code. -- Defined in G.S. 105-228.90.

(2) Personal representative. -- The person appointed by the clerk of superior court under Chapter 28A of the General Statutes to administer the estate of a decedent or, if no one is appointed under that Chapter, the person required to file a federal estate tax return for the estate of the decedent.

(3) Secretary. -- Defined in G.S. 105-228.90.

"**§ 105-32.2. Estate tax imposed in amount equal to federal state death tax credit.**

(a) Tax. -- An estate tax is imposed on the estate of a decedent when a federal estate tax is imposed on the estate under section 2001 of the Code and any of the following apply:

(1) The decedent was a resident of this State at death.

(2) The decedent was not a resident of this State at death and owned any of the following:

a. Real property or tangible personal property that is located in this State.

b. Intangible personal property that has a tax situs in this State.

(b) Amount. -- The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the Code. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate.

"**§ 105-32.3. Liability for estate tax.**

(a) Primary. -- The tax imposed by this Article is payable from the assets of the estate. A person who receives property from an estate is liable for the amount of estate tax attributable to that property.

(b) Personal Representative. -- The personal representative of an estate is liable for an estate tax that is not paid within two years after it was due. This liability is limited to the value of the assets of the estate that were under the control of the personal representative. The amount for which the personal representative is liable may be recovered from the personal representative or from the surety on any bond filed by the personal representative under Article 8 of Chapter 28A of the General Statutes.

(c) Clerk of Court. -- A clerk of court who allows a personal representative to make a final settlement of an estate without presenting one of the following is liable on the clerk's bond for any estate tax due:

(1) An affirmation by the personal representative certifying that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.

(2) A certificate issued by the Secretary stating that the tax liability of the estate has been satisfied.

"§ 105-32.4. Payment of estate tax.

(a) Due Date. -- The estate tax imposed by this Article is due when an estate tax return is due. An estate tax return is due on the date a federal estate tax return is due.

(b) Filing Return. -- An estate tax return must be filed under this Article if a federal estate tax return is required. The return must be filed by the personal representative of the estate on a form provided by the Secretary.

(c) Extension. -- An extension of time to file a federal estate tax return is an automatic extension of the time to file an estate tax return under this Article. The Secretary may, in accordance with G.S. 105-263, extend the time for paying the estate tax imposed by this Article or for filing an estate tax return.

(d) Interest and Penalties. -- The penalties in G.S. 105-236 apply to the failure to file an estate tax return or to pay an estate tax when due. Interest at the rate set in G.S. 105-241.1 accrues on estate taxes paid after the date they are due.

(e) Obtaining Amount Due. -- The personal representative of an estate may sell assets in the estate to obtain money to pay the tax imposed by this Article.

"§ 105-32.5. Making installment payments of tax due when federal estate tax is payable in installments.

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal estate tax under section 6166 of the Code. Acceleration of payments under section 6166 of the Code accelerates the payments due under this section.

"§ 105-32.6. Estate tax is a lien on real property in the estate.

The tax imposed by this Article on an estate is a lien on the real property in the estate and on the proceeds of the sale of the real property in the estate. The lien is extinguished when one of the following occurs:

(1) The personal representative certifies to the clerk of court that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.

(2) The Secretary issues a certificate stating that the tax liability of the estate has been satisfied.

(3) For specific real property, when the Secretary issues a tax waiver for that property.

(4) Ten years have elapsed since the date of the decedent's death.

"§ 105-32.7. Generation-skipping transfer tax.

(a) Tax. -- A tax is imposed on a generation-skipping transfer that is subject to the tax imposed by Chapter 13 of Subtitle B of the Code when any of the following apply:

(1) The original transferor is a resident of this State at the date of the original transfer.

(2) The original transferor is not a resident of this State at the date of the original transfer and the transfer includes any of the following:

a. Real or tangible personal property that is located in this State.

b. Intangible personal property that has a tax situs in this State.

(b) Amount. -- The amount of the tax imposed by this section is the maximum credit for state generation-skipping transfer taxes allowed under section 2604 of the Code. If property in the transfer is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the original transferor was a resident of this State at the date of the original transfer, the North Carolina percentage is the net value of the property transferred that does not have a tax situs in another state, divided by the net value of all property transferred. If the original transferor was not a resident of this State at the date of the original transfer, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property transferred, unless the original transferor's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the original transferor's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in a transfer is its gross value reduced by any debts secured by the property.

(c) Payment. -- The tax imposed by this section is due when a return is due. A return is due the same date as the federal return for payment of the federal generation-skipping transfer tax. The tax is payable by the person who is liable for the federal generation-skipping transfer tax.

"§ 105-32.8. Federal determination that changes the amount of tax payable to the State.

If the federal government corrects or otherwise determines the amount of the maximum state death tax credit allowed an estate under section 6166 of the Code, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within two years after being notified of the correction or final determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

PROPERTY TAX HOMESTEAD EXEMPTION.

Section 5. G.S. 105-277.1(a) reads as rewritten:

"(a) Exclusion. -- The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The first ~~twenty thousand dollars ($20,000)~~ twenty-five thousand dollars ($25,000) in appraised value of a permanent residence owned and occupied by a qualifying owner is excluded from taxation. A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than ~~fifteen thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000).

(3) Is a North Carolina resident.

An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent."

Section 6. G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first ~~twenty thousand dollars ($20,000)~~ twenty-five thousand dollars ($25,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed ~~fifteen thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above ~~fifteen thousand dollars ($15,000),~~ twenty-five thousand dollars ($25,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 7. G.S. 105-277.1A reads as rewritten:

"**§ 105-277.1A. Property classified for taxation at reduced valuation; duties of tax collectors; reimbursement of localities for portion of tax lost.**

(a) On September 1, 1990, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue a list containing the name and address of each person who has qualified in that year for the exemption provided in G.S. 105-277.1. The list shall also contain for each name the total amount of property exempted, the tax rate the property is subject to, and the product obtained by multiplying those two numbers by each other. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall all be on a form prescribed by the Secretary of Revenue.

(a1) On December 1, 1997, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above eleven thousand dollars ($11,000) and the second list shall include those taxpayers whose income was eleven thousand dollars ($11,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above fifteen thousand dollars ($15,000) exempted. On both lists, the tax collector shall provide the tax rate the property is subject to and the product

obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(a2) On December 1, 1999, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above fifteen thousand dollars ($15,000), and the second list shall include those taxpayers whose income was fifteen thousand dollars ($15,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above twenty thousand dollars ($20,000) exempted. On both lists, the tax collector shall provide the tax rate the property is subject to and the product obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 15.1(c).

(c) The Secretary of Revenue may, for cause, grant an extension for the submission of a list required by this section.

(d) Before May 31, 1991, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for the entire list provided pursuant to subsection (a) of this section of the product obtained by multiplying the tax exemption for each taxpayer times the applicable tax rate. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city that was entitled to receive a distribution under this subsection in 1991 the amount it was entitled to receive in 1991.

(d1) Before May 31, 1998, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for both lists provided the preceding December 1 pursuant to subsection (a1) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Before May 31, 1999, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 1998.

(d2) Before May 31, 2000, the Secretary of Revenue shall distribute to the county or city the total for both lists provided the preceding December 1 pursuant to subsection (a2) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 2000.

(e) Any funds received by any county or city pursuant to this section because the county or city was collecting taxes for another unit of government or special district shall be credited to the funds of that other unit or district in accordance with regulations issued by the Local Government Commission.

(f) In order to pay for the reimbursement under this section and the cost to the Department of Revenue of administering the reimbursement, the Secretary of

Revenue shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the reimbursement and the cost of administration."

INCREASE AND INDEX PERSONAL EXEMPTIONS.

Section 8. G.S. 105-134.6(c)(4a) is repealed.INCREASE CHARITABLE GIVING.

Section 9. G. S. 105-130.9 reads as rewritten:

"**§ 105-130.9. Contributions.**

~~Contributions shall be allowed as a deduction to the extent and in the manner provided as follows:~~ (a) North Carolina Corporations. -- Corporations that do not allocate a part of their total net income outside this State may deduct the following contributions to the extent allowed in this section:

(1) Most Charitable Contributions. -- Charitable contributions as defined in section 170(c) of the Code, ~~exclusive of~~ other than contributions allowed in subdivision (2) of this section, ~~shall be allowed as a deduction to the extent provided herein. The amount allowed as a deduction hereunder shall be limited to an amount not in excess of five percent (5%)~~ up to a maximum deduction of ten percent (10%) of the corporation's net income as computed without the benefit of this subdivision or subdivision (2) of this section. ~~Provided, that a carryover of contributions shall not be allowed and that contributions made to North Carolina donees by corporations allocating a part of their total net income outside this State shall not be allowed under this subdivision, but shall be allowed under subdivision (3) of this section.~~

(2) Contributions to North Carolina Governments and Educational Institutions. -- Contributions ~~by any corporation~~ to the following entities: the State of North Carolina, any of its institutions, instrumentalities, or agencies, any county of this State, its institutions, instrumentalities, or agencies, any municipality of this State, its institutions, instrumentalities, or agencies, and ~~contributions or gifts by any corporation to~~ any educational institutions located within North Carolina, no part of the net earnings of which inures to the benefit of any private stockholders or dividend. For the purpose of this subdivision, the ~~words~~ term 'educational institution' ~~shall mean~~ includes only an educational institution ~~which~~ that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where the educational activities are carried on. The ~~words 'educational institution' shall be deemed to include all of such~~ term includes all of the institution's departments, ~~schools~~ schools, and colleges, a group of ~~'educational institutions'~~ educational institutions, and an organization ~~(corporation, trust, foundation, association or other entity)~~ organized and operated exclusively to receive, hold, ~~invest~~ invest,

and administer property and to make expenditures to or for the sole benefit of an ~~'educational institution' or group of 'educational institutions.'~~ educational institution.

~~(3)~~

(b) Interstate Corporations. -- Corporations allocating a part of their total net income outside North Carolina under ~~the provisions of~~ G.S. 105-130.4 ~~shall~~ may deduct from total income allocable to North Carolina contributions made to North Carolina donees qualified under ~~subdivisions (1) and (2) of this section~~ subdivision (1) or (2) of subsection (a) of this section or made through North Carolina offices or branches of other donees qualified under ~~the above-mentioned~~ those ~~subdivisions of this section; provided, such~~ subdivisions. The deduction for contributions made to North Carolina donees qualified under subdivision (1) of this section ~~shall be limited in amount to five percent (5%)~~ may not exceed ten percent (10%) of the total income allocated to North Carolina as computed without the benefit of this ~~deduction for contributions.~~ subsection.

Corporations allocating a part of their total net income outside North Carolina may deduct from net income before allocation under G.S. 105-130.4 contributions made to other donees qualified under subdivision (1) of subsection (a) of this section. This deduction may not exceed ten percent (10%) of the corporation's net income before allocation under G.S. 105-130.4, as computed without the benefit of this subsection.

(c) Carryforward. -- If a corporation's deductions allowed under subdivision (a)(1) or subsection (b) of this section exceed the applicable percentage limitation, the corporation may carry the excess forward for the succeeding five years to the extent the amounts carried forward under this subsection plus the amounts deductible under subdivision (a)(1) or subsection (b) of this section for each taxable year do not exceed the percentage limitation for that taxable year. Amounts deductible under subdivision (a)(1) or subsection (b) of this section for the current taxable year shall be taken into account before amounts carried forward under this subsection.

~~(4)~~ ~~The~~

(d) Double Benefit Disallowed. -- The amount of a contribution for which the taxpayer claimed a tax credit pursuant to G.S. 105-130.34 shall not be eligible for a deduction under this section. The amount of the credit claimed with respect to the contribution is not, however, required to be added to income under G.S. 105-130.5(a)(10)."

Section 10. G.S. 105-130.5(b)(5) reads as rewritten:

"(5) Contributions or gifts made by any corporation ~~within the income year~~ to the extent provided under G.S. 105-130.9."

Section 11. G.S. 105-151.26 reads as rewritten:

"§ 105-151.26. Credit for charitable contributions by nonitemizers.

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Division an amount equal to ~~two and three-fourths percent (2.75%)~~ seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable

contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

EFFECTIVE DATES.

Section 12. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that was available under the amended or repealed statute before the effective date of its amendment or repeal.

Section 13. Sections 1 and 2 of this act become effective October 1, 1998, and apply to sales made on or after that date. Sections 3 and 4 of this act become effective January 1, 1999, and apply to the estates of decedents dying on or after that date. Sections 5 through 7 of this act are effective for taxes imposed for taxable years beginning on or after July 1, 1999. Sections 8 through 11 of this act are effective for taxable years beginning on or after January 1, 1999. The remainder of this act is effective when it becomes law.

DRAFT

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1092 Proposed PCS 7973

SHORT TITLE: Reduce North Carolina Taxes

SPONSOR(S): Representative Gray

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($million)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
2% Food Tax Repeal	(122.8)	(184.5)	(190.0)	(195.7)	(201.6)
Repeal Inheritance Tax		(52.5)	(79.4)	(85.7)	(92.6)
Inc. Homestead Exemption		(9.0)	(9.0)	(9.0)	(9.0)
Corp. Charitable Deduction		(4.0)	(4.0)	(4.0)	(4.0)
Non-Itemizer Charity Credit		(7.6)	(7.8)	(7.8)	(7.8)
Inc. Personal Exemption	(56.1)	(133.0)	(175.3)	(219.2)	(264.2)
Total - Gen. Fund	(178.9)	(390.6)	(465.5)	(521.4)	(579.2)

EXPENDITURES (See Technical Considerations)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Counties and cities that levy a property tax

EFFECTIVE DATE: Sections 1 and 2 (sales tax on food) are effective October 1, 1998. Sections 3 and 4 (inheritance tax) become effective January 1, 1999. Sections 5 through 7 (property tax homestead exemption) are effective for taxable years beginning on or after July 1, 1999. Section 8 (personal exemption), sections 9 and 10 (corporate charitable deduction), and section 11 (nonitemizer credit) are effective for taxable years beginning on or after January 1, 1999.

BILL SUMMARY: The bill deals with five major tax issues: 1) eliminates the state sales tax on food, 2) eliminates the state's inheritance tax and retains a state estate tax equal to the federal State Death Tax Credit, 3) increases and indexes the individual income tax personal exemption to conform to the federal exemption, 4) increases the property tax homestead exemption amount and income eligibility amount and reimburses local governments for the resulting loss, and 5)

encourages charitable giving by expanding the corporate charitable deduction and by increasing the nonitemizer tax credit.

ASSUMPTIONS AND METHODOLOGY:

REPEAL STATE SALES TAX ON FOOD

The 1996 General Assembly lowered the state sales tax on food items intended for home consumption (defined as those items eligible for purchase with Food Stamps) from 4% to 3%, effective January 1, 1997. The 1997 General Assembly lowered the sales tax on food from 3% to 2% effective July 1, 1998. Section 1 of this proposed committee substitute repeals the remaining 2 cents of the state sales tax on food on October 1, 1998.

The original source of data for the estimate was a 1961 field survey conducted by field auditors of the Department of Revenue assigned to tabulate the impact of eliminating the tax exemption on food. Over the years these numbers have been updated for growth with data from the monthly "type of business establishment" reports of the Department of Revenue. Data from a special tabulation of the Department of Revenue for February and March 1997 indicated that the estimates used in previous fiscal notes were on target. As a check on the data, estimates of food tax exemptions from other states have been reviewed. Furthermore, the estimates are consistent with nationwide food consumption data compiled by the U. S. Department of Commerce (and allocated to North Carolina by the Fiscal Research Division). Based on federal data, the estimated 3% annual growth in food tax purchases is also on target.

The October 1, 1998 reduction will be less than 9 months of revenue loss due to a lag between the retail sale and the remittance of the tax. The full year cost of the 2 cent reduction will be in FY 1999-00.

	STATE FISCAL YEAR ($million)				
	98-99	99-00	00-01	01-02	02-03
BACKGROUND INFORMATION (1)					
CURRENT TAX YIELD (2% effective 7/1/98)	$179.1	$184.5	$190.0	$195.7	$201.6
1 CENT	$89.6	$92.2	$95.0	$97.9	$100.8
REDUCE TO 0 % (10/1/98) (2)	($122.8)	($184.5)	($190.0)	($195.7)	($201.6)

NOTES:
(1) Assumes annual growth of 3%
(2) The effect is less than 75% in the first
year due to a lag between the retail sale and the remittance.

ELIMINATE NORTH CAROLINA INHERITANCE TAX

North Carolina has both an inheritance tax and an estate tax. These taxes are borne by the beneficiary. When calculating taxes owed, a determination is made of the net value of the estate and the beneficiary's proportion of that estate. Then inheritance taxes are applied based on the beneficiary's classification. Once a state inheritance tax is determined, that number must be compared to the State Death Tax Credit (This credit amount is drawn from the federal estate tax form). If the inheritance tax is larger than the State Death Tax Credit, the beneficiary forwards the total inheritance tax to the state. If the credit is larger, a North Carolina Estate Tax is charged to bring the total tax up to the State Death Tax Credit level. As of January 1997 only 17 states, including North Carolina, still retain an inheritance tax. Sections 3 and 4 of this bill repeal the inheritance tax, with the net effect of expanding the state estate or "pick-up" tax.

The Tax Research Division of the Department of Revenue provided data based on inheritance tax returns filed and closed out in 1993. The loss associated with the 1993 data equals $42.3 million, or 45.1% of total potential inheritance tax collections, in General Fund revenue. This percentage loss was applied to current 1999-00 inheritance tax collections estimates. Future years were forcasted based on the expected growth rate in inheritance tax collections as defined in the North Carolina model (7.986%). A one time 5% adjustment was included to capture the impact of the increase in the federal unified credit and its influence on the State Death Tax Credit. No FY 1998-99 fiscal impact is shown for this item because there is a nine month lag in the payment of inheritance taxes. For example, if a benefactor dies on January 1, 1999 the inheritance tax paid by their beneficiaries would not be due until September 1, 1999, which is the next fiscal year. The estimate for FY 1999-00 has also been reduced to allow for this lag factor.

It should be noted that the federal government requires that beneficiaries pay at least the amount of the death tax credit to the state, or the federal government will retain the balance. As such, reducing a North Carolina beneficiary's total tax liability to below the State Death Tax Credit level (i.e. eliminating both the inheritance and estate taxes) will only result in additional funds to the federal government. The beneficiary's total tax liability will not change.

PROPERTY TAX HOMESTEAD EXEMPTION

The Homestead Exemption is a partial exemption from property taxes for the residence of a person who is either aged 65 or older, or totally disabled, and who has an income of less than $15,000. The exemption amount was last increased in 1996, when it was increased from $15,000 to $20,000 effective July 1, 1997. Before then the exemption was last increased in 1993 from $12,000 to $15,000. The income eligibility amount was last increased in 1996, when it was increased from $11,000 to $15,000. Before then the income threshold had last been increased in 1987, when it was increased from $10,000 to $11,000.

Sections 5 and 6 of the proposed bill increase the Homestead Property Tax Exemption amount for the elderly and disabled from $20,000 to $25,000 and increase the income eligibility threshold from $15,000 to $25,000. Section 7 of the proposal holds counties and cities harmless for the loss attributable to the increase proposed by the bill. As such, the full financial cost of the expansion of the Homestead Exemption will be borne by the state.

The current annual cost of the Homestead Exemption program is approximately $27 million. That cost is divided between the state and the counties. History indicates that approximately 80% of the total cost is related to the property exemption and 20% is related to the income requirement. The proposed act increases the value of exempt property 25% and increases the income threshold 66.7%. If 80% of the cost or $21.6 million is devoted to exempt property, then a 25% increase in the exemption equals $(5.4) million. If 20% of the cost of the program is devoted to the income threshold or $5.4 million, then a 66.7% increase in the threshold equals ($3.6) million. The $9 million increase in the cost of the Homestead Exemption will be borne by the state.

INCREASE AND INDEX PERSONAL EXEMPTIONS

By repealing the add-back to income in GS 105-134.6(c)(4a) in Section 8 of the bill, the state personal exemption rate will equal the federal personal exemption amount each year beginning in tax year 1999. The General Assembly last increased the state personal exemption amount to the federal rate in 1995, but did not index it for inflation. The current state personal exemption is $2500, while the federal personal exemption rate for tax year 1999 is projected to be $2750. The rate is set each year by increasing the prior year amounts by the CPI, then round down to the nearest $50. The projected rates for tax years 1999 to 2003 are follows:

	State	1998	1999	2000	2001	2002	2003
Personal Exemption	$2,500	$2,700	$2,750	$2,850	$2,950	$3,050	$3,150
CPI		1.032	1.031	1.03	1.034	1.033	1.035

This section will also end the personal exemption of $2,000 placed on the following income groups:

Married filing jointly	$100,000
Head of Household	$80,000
Single	$60,000
Married filing separately	$50,000

The state will still conform to the federal phase-out of the personal exemption at the highest income levels. ($181,800 married filing jointly; $151,500 head of household; $121,200 single; $90,900 married filing separately)

The cost for indexing the personal exemption was derived using the Individual Income Tax computer model operated by the Department of Revenue, the Fiscal Research Division, and the Office of State Budget and Management. The microsimulation model uses actual state and federal tax return data from tax year 1994 to estimate the impact of tax changes on the General Fund. The results from the model were checked against the 1994 Individual Income Tax Detail Report issued by the Department of Revenue. Manual calculations were consistent with the model projections.

The first year impact in FY 98-99 equals half the loss for tax year 1999 ($56.1 million) due to taxpayers adjusting their withholding tables and their estimated payments in January through June of 1999. The impact for each following year is half of one tax year plus half of the next tax year. For example, the FY 99-00 estimate of $133 million is half of tax year 1999 ($56.1 million) plus half of tax year 2000 ($76.9 million).

INCREASE CHARITABLE GIVING

Section 9 of the bill increases the allowable annual deduction from the corporate income tax for charitable contributions from 5% to 10% and provides for a five-year carry forward for deductions in excess of 10%. Using 1994 corporate income tax return data, the Tax Research Division of the Department of Revenue estimates **this change will produce a revenue loss in the General Fund between $3 million and $4 million per year.** Approximately 69% of returns with contributions deducted less than 5% of net income. The remaining 31% of returns with contributions had deductions equal to or greater than 5%. However, this group probably included contributions to NC government and educational institutions which can be unlimited.

Section 11 of the bill increases the income tax credit for charitable contributions by non-itemizers from 2.75% to 7%. The credit is allowed for those contributions that exceed 2% of the taxpayer's adjusted gross income. The non-itemizer charitable contribution tax credit of 2.75% went into effect on January 1, 1997. The estimated cost of the 2.75% credit is approximately $5 million a year. If this credit were increased to 7%, the annual cost would be approximately $12.7 million each year. The net fiscal impact of the 7% proposal is shown below. A 1% growth factor is assumed for this tax credit and is based on the actual growth in the number of individual income tax returns filed from 1989 to 1993. The increased credit would not affect the budget until FY 99-00, because taxpayers will not file returns for Tax Year 1999 until the spring of 2000.

	($ Millions)			
	1999-00	2000-01	2001-02	2002-03
2.75% credit	(5.1)	(5.1)	(5.2)	(5.3)
7% credit (1-1-99)	(12.7)	(12.9)	(13.0)	(13.1)
Additional General Fund Loss	**(7.6)**	**(7.8)**	**(7.8)**	**(7.8)**

These estimates are based on charitable giving rates for non-itemizers provided by the Independent Sector, a non-profit coalition of over 800 corporate, foundation and voluntary organization members. The number of non-itemizers in North Carolina is based on estimates from the Department of Revenue's personal income tax model.

It should be noted that the above estimates are based on current giving behavior. If the credit is successful in increasing charitable giving, then the credit will produce additional losses for the

General Fund. For every 5% increase in charitable giving, an additional $2 million in State revenues will be lost.

TECHNICAL CONSIDERATIONS:

I. Food Tax - The Department of Revenue estimates that each change in the sales tax rate cost the department $100,000 to hire temporary employees to review error returns and process assessments generated by errors. The Department also estimates that another $19,000 is spent on accounting and computer system changes. **However , it should be noted that when the food tax reduction from 4% to 3% was implemented in 1997, the administrative cost was absorbed in the Department's budget. There was also no appropriation made for the food tax reduction scheduled for July 1, 1998.**

II. Inheritance Tax - Although the inheritance tax is repealed, the State would maintain compliance with the Federal Estate Tax (pick-up tax). With the Federal pick-up tax still in place, a portion of the returns that are currently filed would continue to be required. For example in FY 1996-97 there were 7,931 Inheritance Tax returns. Of that number, the Department estimated that 35% or 2,776 required filing under the Federal pick-up

The Department could abolish two of the six employees in Office Examinations who work with Inheritance Tax and with Gift Tax. Two positions are needed for the Gift Tax portion. At least two will be needed for the changed State estate tax and to work with the existing Inheritance Tax files until they are all resolved. **The Department could abolish the remaining two positions and save $52,453, but would like to reallocate these positions to the Correspondence Unit that was created in 1997 .** This unit resolves correspondence not attached to payments before that correspondence is referred to audit in Office Examinations, to administrative officers in Office Services, or to Tax Administration. If the bill is enacted, the Appropriations Committee in the 1999 Session should determine the number of personnel needed in this section.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps & Richard Bostic
APPROVED BY:
DATE: May 26, 1998

DRAFT

FISCAL ANALYSIS MEMORANDUM

DATE: May 26, 1998

TO: House Finance Committee

FROM: Dave Crotts
Linda Struyk Millsaps
Fiscal Research Division

RE: Repeal of the Gift Tax

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES		(18.5)	(21.1)	(23.9)	(27.2)
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: January 1, 1999

BILL SUMMARY: Under current law a tax is levied on the donor against all property transferred as gifts in excess of $10,000, real or personal, during a calendar year. Special arrangements are made for non-residents. Gifts to a spouse are exempt from taxation. This amendment would repeal, in total, the North Carolina Gift Tax.

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue reports 1996-7 gift tax receipts of $12.56 million. Forecasts of future revenues assume a gift tax elasticity of 2.17, creating growth rates of 14.5% (1997-8), 13.5% (1998-9), and 13.7% (1999 and beyond).

TECHNICAL CONSIDERATIONS: Gift tax revenues are highly violable and subject to significant income spikes. Because 1997-8 collects appear to be one of those spiked years, it was determined that those figures should not be used as a baseline for the model.

EXPLANATION OF SENATE BILL 1092:
PROPOSED HOUSE COMMITTEE SUBSTITUTE
(As Amended May 26, 1998)
Reduce North Carolina Taxes

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: May 26, 1998
SPONSOR: Senator Hoyle

Senate Bill 1092, as passed by the Senate, reduces the State sales tax on food from 2% to 1%, effective November 1, 1998, and repeals the State sales tax on food, effective July 1, 1999. The **proposed House Committee Substitute**, as amended by the House Finance Committee on May 26, 1998, not only eliminates the State sales tax on food, but also reduces several other taxes:

- It repeals the remaining 2% State sales tax on food, effective October 1, 1998.
- It eliminates the State's inheritance tax, effective January 1, 1999.
- It increases the property tax homestead exemption amount and income eligibility amount to $25,000.
- It increases and indexes the individual income tax personal exemption, effective January 1, 1999.
- It expands the State corporate income tax deduction for charitable contributions, effective January 1, 1999.
- It increases the income tax credit for charitable contributions by nonitemizers from 2.75% to 7%, effective January 1, 1999.

Repeal State Sales Tax on Food

In 1996, the General Assembly reduced the State sales tax on food from 4% to 3%, effective January 1, 1997. Last year, the General Assembly reduced the State sales tax on food from 3% to 2%, effective July 1, 1998. This bill completes the reduction by eliminating the remaining 2% State sales tax on food, effective October 1, 1998.

The sale of tangible personal property in North Carolina is subject to a 4% State sales tax unless it is specifically exempt from the tax. In 1971, 1983, and 1985, the General Assembly passed legislation allowing local governments to impose a local sales tax. The local sales tax rate is 2%. On most tangible personal property, the combined State and local sales tax rate in North Carolina is 6%. However, because of past legislation reductions, the combined State and

local sales tax rate on food, effective July 1, 1998, will be 4%. This bill repeals the State's remaining 2% sales tax rate on food, but it retains the 2% local sales tax rate. Therefore, effective October 1, 1998, there will only be a local 2% sales tax on food.

The sales tax on food applies to food that may be purchased with food stamps. Federal law determines what can be purchased with food stamps and, therefore, what food is exempt from the State sales tax. Food purchased with food stamps is exempt from both the State and the local sales tax.

Eliminates the State Inheritance Tax

Section 3 of this bill repeals the State's inheritance tax and Section 4 of this bill retains a State estate tax that is equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of State estate tax is known as a "pick-up" tax because it picks up for the State the amount of federal estate tax that would otherwise be paid to the federal government. The repeal of the State's inheritance tax is effective January 1, 1999, and applies to the estates of decedents dying on or after that date.

North Carolina imposes an inheritance tax on property transferred by a decedent. The amount of tax payable depends on the relationship of the person transferring the property (the decedent) to the person receiving the property (the beneficiary). This is in contrast to federal law, which has a single rate schedule for estates.

State law classifies beneficiaries into three classes, Class A, Class B, and Class C, and sets different inheritance tax rates for each class. A Class A beneficiary is a lineal ancestor, a lineal descendant, an adopted child, a step-child, or a son-in-law or daughter-in-law whose spouse is not entitled to any of the decedent's property. A Class B beneficiary is a sibling, a descendant of a sibling, or an aunt or uncle by blood. A Class C beneficiary is anyone who is not a Class A or Class B beneficiary.

Class A beneficiaries have the lowest inheritance tax rates and a $600,000 inheritance tax exemption. Class B beneficiaries have higher rates and no exemption. Class C beneficiaries have the highest rates and no exemption. Thus, North Carolina's rate structure favors transfers to children and parents by giving those transfers the lowest rates plus an exemption and prefers transfers to other close family members over transfers to more distant relatives or to persons who are not related.

Property Tax Homestead Exemption

Sections 6, and 7 of the bill expand the property tax homestead exemption amount from $20,000 to $25,000 and increase the income eligibility amount from $15,000 to $25,000, effective July 1, 1999. Section 8 of the bill provides a State reimbursement to local governments for their additional revenue loss as a result of this change.

The homestead exemption is a partial exemption from property taxes for the residence of a person who is either aged 65 or older or totally disabled and who has an income of less than $15,000. The income used to determine the income eligibility amount includes moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses is included, whether or not the property is in both names.

The exemption amount was last increased in 1996, when it was increased from $15,000 to $20,000 effective July 1, 1997. Before then, the exemption amount had last been increased in 1993 from $12,000 to $15,000. The income eligibility amount was last increased in 1996, when it was increased from $11,000 to $15,000 effective July 1, 1997. Before then, the income threshold had last been increased in 1987, when it was increased from $10,000 to $11,000.

Increase and Index Personal Exemption

Section 9 of the bill provides an automatic annual income tax reduction for individuals by increasing the State income tax personal exemptions to the amount of the federal personal exemptions, and provides that the exemption amounts will increase automatically each year at the same rate as the federal exemptions, based on the rate of inflation. This section of the bill becomes effective beginning with the 1999 tax year. Increasing the personal exemption amounts reduces State income taxes for all individuals who pay income tax.

The State's personal exemption amounts were increased in 1995 in two stages, from $2,000 to $2,250 for the 1995 tax year and then to $2,500 for the 1996 tax year for taxpayers whose adjusted gross income falls below the amount set by statute. For married filing jointly, the threshold amount is $100,000. The federal personal exemption amounts increase automatically each year to keep pace with inflation. The federal amount for the 1997 tax year was $2,650 and is expected to increase about $50 each year thereafter. Under the Code, the personal exemption is phased out for those taxpayers with adjusted gross income in excess of certain threshold amounts. The threshold amounts are adjusted

annually for inflation. For 1998, the phaseout of personal exemptions is projected by CCH to begin at $186,800 for married taxpayers filing jointly and to completely phaseout for those taxpayers whose adjusted gross income exceeds $309,300.

Increasing the State's personal exemption amounts to the federal amounts and allowing them to grow at the same pace in future years has three benefits. First, it reduces State personal income taxes for all North Carolina citizens who pay income tax. Families with children receive a larger tax reduction because a personal exemption deduction is allowed for the taxpayer, the spouse, and each dependent. Second, it allows the State tax structure to respond automatically to inflation. If the personal exemption amounts are not indexed to inflation, taxpayer's taxes increase automatically each year because the value of their income is inflated, even if, in real terms, they make the same amount of income or less income each year. Third, it greatly simplifies tax filing for the affected taxpayers. North Carolina's individual income tax uses federal taxable income as the starting point for calculating North Carolina taxable income. As long as North Carolina's personal exemptions are not indexed to the federal amounts, every taxpayer must perform an extra calculation to adjust for the gap by adding back to federal taxable income the difference between the lower North Carolina personal exemption amount and the higher federal personal exemption amount. This simplification should decrease the number of individual income tax returns received with errors. Thirty-seven percent of the returns containing errors were in error because of additions to taxable income. While there are several additions to taxable income required by law, the Department's experience reflects that the standard deduction and personal exemption adjustments are the ones most commonly in error.

Increase Charitable Giving

Sections 9 and 10 expand the State corporate income tax deduction for charitable contributions by increasing the amount a corporation may deduct and by allowing a corporation to carry forward any unused credit amount. Section 11 increases the amount of the tax credit for charitable contributions made by individuals who do not itemize their deductions from 2.75% to 7% of eligible contributions.

North Carolina currently caps corporate contributions to most charitable entities at an amount equal to 5% of the corporation's North Carolina taxable income. The federal cap is 10% of the corporation's taxable income. Section 9 changes the North Carolina cap from 5% to 10%. Contributions to the following entities are not subject to any cap in North Carolina: the State of North Carolina,

any of its agencies or political subdivisions, and any North Carolina nonprofit educational institution. The bill does not change the current law with regard to these entities; deductions for contributions will still be unlimited.

If a corporation's contributions exceed the 5% cap, North Carolina does not allow the corporation to carry the excess forward and deduct it in a future year. Under federal law, if a corporation's contributions exceed the 10% cap, they may be carried forward and deducted in the next five tax years. Section 9 and 10 allow a five-year carryforward for deductions subject to the cap.

Under the federal Internal Revenue Code, an individual who itemizes deductions may deduct contributions to nonprofit charitable organizations. Individuals who elect the standard deduction, however, may not deduct charitable contributions. An individual's North Carolina's income tax is based on the federal calculation of taxable income, with some adjustments. The federal disallowance of charitable deductions for nonitemizers is "piggybacked" by North Carolina tax law. Legislation was introduced in Congress last year to allow nonitemizers to deduct charitable contributions, but it did not pass.

Individuals who elect the standard deduction are those whose total itemized deductions (such as mortgage interest, State and local property and income taxes, medical expenses, and charitable contributions) do not exceed the standard deduction amount. The standard deduction amounts for 1997 are $6,900 for a married couple filing a joint return and $4,150 for a single individual.

In 1996, the General Assembly enacted G.S. 105-151.26, which allows a North Carolina income tax credit for 2.75% of a nonitemizer's charitable contributions to the extent the contributions exceed 2% of the taxpayer's adjusted gross income. A tax credit is a dollar-for-dollar subtraction from tax rather than a subtraction from taxable income. Thus, if a taxpayer pays tax at the 7% rate, a 7% tax credit is equal to a full deduction. North Carolina's tax rates are 6%, 7%, and 7.75%. By raising the credit from 2.75% to 7%, Section 11 of this bill would make the credit equivalent to the deduction currently enjoyed by most itemizers.

Budget Simulation: Major Expansion Budget Items, HCS for SB 1092, Gift Tax						
General Fund Expenditures and Revenues (Recurring Items)						
($Million)	BUDGET	SIMULATION				
	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04
REVENUES						
Revised Revenue Estimate *(note 1)*	$12,251.1	$12,977.2	$13,807.0	$14,718.5	$15,787.9	$16,859.4
Child Health Insurance Tax Credit		($64.5)	($65.2)	($65.6)	($66.0)	($66.4)
HCS for SB 1092	($178.9)	($390.6)	($465.5)	($521.4)	($579.2)	($638.6)
Gift Tax Repeal Amendment		($18.5)	($21.1)	($23.9)	($27.2)	($31.0)
Impact of Bailey Decision	($128.6)	($125.4)	($122.3)	($119.2)	($116.2)	($107.7)
Total Availability	**$11,943.6**	**$12,378.2**	**$13,132.9**	**$13,988.4**	**$14,999.3**	**$16,015.7**
EXPENDITURES						
Recurring Expenditure Requirements *(note 2)*	$11,532.0	$11,828.0	$12,115.2	$12,387.0	$12,663.0	$12,956.3
Governor's Proposed Additional Cuts	($174.2)	($324.1)	($474.1)	($474.1)	($474.1)	($474.1)
Health Insurance for Children	$15.6	$24.0	$25.5	$27.1	$28.9	$30.7
MANDATES						
Universities Enrollment growth	$13.7	$32.6	$61.4	$92.8	$127.9	$127.9
Comm.College Enrollment Growth	$1.4	$1.4	$0.1	$0.1	$0.1	$0.1
ADM Growth and Longevity	$35.6	$35.6	$35.6	$35.6	$35.6	$35.6
Teachers to National Average	$221.5	$495.2	$772.3	$884.5	$1,000.1	$1,119.2
Subtotal-Mandates	$272.2	$564.8	$869.4	$1,013.0	$1,163.7	$1,282.8
CRITICAL ITEMS						
State Employees/Teacher Health Plan	$0.0	$93.2	$125.1	$289.1	$343.5	$343.5
Smart Start Expansion	$56.6	$134.2	$221.0	$234.0	$248.2	$248.2
State Employee Pay Increases *(note 3)*	$187.7	$331.5	$479.8	$630.9	$786.6	$947.1
Juvenile Justice	$30.0	$30.0	$30.0	$30.0	$30.0	$30.0
ABC's Program	$98.5	$98.5	$98.5	$98.5	$98.5	$98.5
Debt Service-Proposed Bonds *(note 5)*	$33.5	$33.0	$32.5	$32.0	$31.6	$31.2
Subtotal-Critical Items	$406.3	$720.4	$986.9	$1,314.5	$1,538.4	$1,698.5
Total Expenditures	**$12,051.9**	**$12,813.1**	**$13,522.9**	**$14,267.5**	**$14,919.9**	**$15,494.2**
Surplus (Shortage)	($108.3)	($434.9)	($390.0)	($279.1)	$79.4	$521.5

note 1: Consensus revenue estimates May 5, 1998 and FRD General Fund Financial Model projections

note 2: Continuation Budget figures from Governor's Recommended Budget, not including expansion items

FRD May 27, 1998

note 3: 4% for 1998-9 and 3% in later years

note 4: Items left unaddressed include highway maintenance, intangibles tax refunds (if paid through income tax credits), and low-weath litigation.

note 5: Rough estimate

Lee. Hoyle
Faulcut

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1092

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1092-ALA-001

Date_____,1998

Comm. Sub. [yes]
Amends Title [yes]
PCS 1933

1 moves to amend the bill on page 1, line 6,
2 by deleting the phrase:
3 "FOR CERTAIN TAXPAYERS";
4 and on page 1, line 12 by removing the quotation mark at the end of
5 the line;
6 and on page 8, lines 1-18, by rewriting the lines to read:
7 "Section 8./ G.S. 105-134.6(c)(4a) is repealed."
8

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1092

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1092-ARB-2 Page 1 of __

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [YES]
S1092-PCS1933

Representative McMahan

moves to amend the bill on page 1, line 6, by deleting the word "AND";

and on page 1, line 9, by deleting the word "LOSS." and substituting the phrase "LOSS, TO EXPAND THE STATE CORPORATE INCOME TAX DEDUCTION FOR CHARITABLE CONTRIBUTIONS, AND TO INCREASE THE INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS BY NONITEMIZERS.";

and on page 8, lines 18 and 19, by inserting the following new sections between those lines:

"INCREASE CHARITABLE GIVING."

Section 9. G. S. 105-130.9 reads as rewritten:

"**§ 105-130.9. Contributions.**

~~Contributions shall be allowed as a deduction to the extent and in the manner provided as follows:~~ (a) North Carolina Corporations. -- Corporations that do not allocate a part of their total net income outside this State may deduct the following contributions to the extent allowed in this section:

(1) Most Charitable Contributions. -- Charitable contributions as defined in section 170(c) of the Code, ~~exclusive of~~ other than contributions allowed in subdivision (2) of this section, ~~shall be allowed as a deduction to the extent provided herein. The amount allowed as a deduction hereunder shall be limited to an amount not in excess of five percent (5%)~~ up to a maximum deduction of ten percent (10%) of the corporation's net income as computed without the benefit of this subdivision or subdivision (2) of this

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1092

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1092-ARB-2 Page 2 of __

section. ~~Provided, that a carryover of contributions shall not be allowed and that contributions made to North Carolina donees by corporations allocating a part of their total net income outside this State shall not be allowed under this subdivision, but shall be allowed under subdivision (3) of this section.~~

(2) Contributions to North Carolina Governments and Educational Institutions. -- Contributions ~~by any corporation~~ to the following entities: the State of North Carolina, any of its institutions, instrumentalities, or agencies, any county of this State, its institutions, instrumentalities, or agencies, any municipality of this State, its institutions, instrumentalities, or agencies, and ~~contributions or gifts by any corporation to~~ any educational institutions located within North Carolina, no part of the net earnings of which inures to the benefit of any private stockholders or dividend. For the purpose of this subdivision, the ~~words~~ term 'educational institution' ~~shall mean~~ includes only an educational institution ~~which~~ that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where the educational activities are carried on. The ~~words 'educational institution' shall be deemed to include all of such~~ term includes all of the institution's departments, ~~schools~~ schools, and colleges, a group of ~~'educational institutions'~~ educational institutions, and an organization ~~(corporation, trust, foundation, association or other entity)~~ organized and operated exclusively to receive, hold, ~~invest~~ invest, and administer property and to make expenditures to or for the sole benefit of an ~~'educational institution' or group of 'educational institutions.'~~ educational institution.

~~(3)~~

(b) Interstate Corporations. -- Corporations allocating a part of their total net income outside North Carolina under ~~the provisions of~~ G.S. 105-130.4 ~~shall~~ may deduct from total income allocable to

North Carolina contributions made to North Carolina donees qualified under ~~subdivisions (1) and (2) of this section~~ subdivision (1) or (2) of subsection (a) of this section or made through North Carolina offices or branches of other donees qualified under ~~the above-mentioned~~ those ~~subdivisions of this section; provided, such~~ subdivisions. The deduction for contributions made to North Carolina donees qualified under subdivision (1) of this section ~~shall be limited in amount to five percent (5%)~~ may not exceed ten percent (10%) of the total income allocated to North Carolina as computed without the benefit of this ~~deduction for contributions.~~ subsection.

Corporations allocating a part of their total net income outside North Carolina may deduct from net income before allocation under G.S. 105-130.4 contributions made to other donees qualified under subdivision (1) of subsection (a) of this section. This deduction may not exceed ten percent (10%) of the corporation's net income before allocation under G.S. 105-130.4, as computed without the benefit of this subsection.

(c) Carryforward. -- If a corporation's deductions allowed under subdivision (a)(1) or subsection (b) of this section exceed the applicable percentage limitation, the corporation may carry the excess forward for the succeeding five years to the extent the amounts carried forward under this subsection plus the amounts deductible under subdivision (a)(1) or subsection (b) of this section for each taxable year do not exceed the percentage limitation for that taxable year. Amounts deductible under subdivision (a)(1) or subsection (b) of this section for the current taxable year shall be taken into account before amounts carried forward under this subsection.

~~(4) The~~

(d) Double Benefit Disallowed. -- The amount of a contribution for which the taxpayer claimed a tax credit pursuant to G.S. 105-130.34 shall not be eligible for a deduction under this section. The amount of the credit claimed with respect to the contribution is not, however, required to be added to income under G.S. 105-130.5(a)(10)."

Section 10. G.S. 105-130.5(b)(5) reads as rewritten:

"(5) Contributions or gifts made by any corporation ~~within the income year~~ to the extent provided under G.S. 105-130.9."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1092

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1092-ARB-2 Page 4 of __

Section 11. G.S. 105-151.26 reads as rewritten:
"**§ 105-151.26. Credit for charitable contributions by nonitemizers.**
A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Division an amount equal to ~~two and three-fourths percent (2.75%)~~ seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.
No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.";

and on page 8, line 20, by deleting "Section 9." and substituting "Section 12.";

and on page 8, line 25, by deleting "Section 10." and substituting "Section 13.";

and on page 8, line 29, by deleting "Section 8 of this act is" and substituting "Sections 8 through 11 of this act are".

SIGNED Wm. McNeil
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1092

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1092-ARB-7 Page 1 of __

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [YES]
S1092-PCS7973

Representative Capps

moves to amend the bill on page 1, line 10, by deleting the word "AND";

and on page 1, line 12, by deleting the word "NONITEMIZERS." and substitute the phrase "NONITEMIZERS, AND TO REPEAL THE GIFT TAX.";

and on page 10, lines 12 and 13, by inserting the following between those lines to read:
"REPEAL STATE GIFT TAX.
Section 11.1. Article 6 of Chapter 105 of the General Statutes is repealed.";

and on page 10, line 24, by inserting the following sentence immediately before the word "The": "Section 11.1 of this act becomes effective January 1, 1999, and applies to gifts made on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED X FAILED _____ TABLED _____

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Gray, Brawley, Dickson & C. Wilson** for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 1092 A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE STATE SALES TAX ON FOOD.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

VISITOR REGISTRATION SHEET

House Finance — May 27, 1998 (8:00 AM)

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
~~R L Fowler~~	
Richard Hancock	Gov. Office
Ed Lawley	Massage license bill
Emily Neal	Integrated Massage & Bodywork
Ricki Rosen	Body Therapy Institute
DAVID BAKER	DAVID BAKER RN NCTMB 776 Rapp Oaks Trail P.O Box 232 Branstown, NC 28402
STEVE KEENE	NC MEDICAL SOCIETY
William H Potter Jr	NCPTA - NCDS
Mitchell Setzer	Smith Setzer & Sons. PO Box 250. Catawba. NC 28609
Sabra Faires	Dept of Revenue
Dr. Veronica Vela	HealthEcology®
Dr Russ Bouchard	HealthEcology®
Alice Garland	Electricities

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Pomeranz	DOR
Charles Hawks	DOR
Anna Pope	NC DOR
Charles Collins	"
Patti Seawell	"
Bill	~~NCRA~~
Bernard Allen	SOS
Mac Mumbaker	Poyner & Spruill
Amy Ford	NC Physical Therapy Assoc.
Melissa Horton	NC Phys Ther Assoc
Robert Pulley	M/T
John Rustin	NCFPC

VISITOR REGISTRATION SHEET

Horse Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
David Simmons	ZDA, PA
Andy Romanet	N.C.A.M.
Amy Jo Bain	Smith Anderson
Joan Perry	Capital Group
Mike Olsen	MSPAR LLC
Doug Johnson	IBM
Ken Wright	BCBSNC
Susan Valenti	Nationwide
Ken Howell	NCBA
Jean Greenhalgh	UNC-GA - NCSU Ag Bgr
Alan Miles	Bandy & Dixon LLP
Andy Ellen	NC Retail Merchants

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ann Lasse	NCRMA
FRAN REGAN	NCRMA
W McBride	NCD

VISITOR REGISTRATION SHEET

[redacted], House Finance — May 27, 1998 after session
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Rick Rogers	NC Massage Therapy Assn
DAVID BAKER	DAVID BAKER RN Massage Therapy
Emily Neal	Integrated Massage Therapy
[redacted]	
[redacted]	

MINUTES

HOUSE COMMITTEE ON FINANCE

TUESDAY, MAY 26, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Tuesday, May 26, 1998 at 8:30 a.m. in Room 544-LOB. A silent roll was taken (roll list denotes members present).

Rep. Gray called the meeting to order.

SB-1092 ELIMINATE STATE FOOD TAX

Sen. Hoyle reminded members of his explanation from the Thursday meeting. After his remarks, Rep. Rayfield was recognized to explain his portion of the food tax of the bill. Rep. Luebke spoke in favor of repealing the food tax. Rep. Cansler explained the inheritance tax portion of this bill. Rep. Womble questioned how this will benefit lower income families. Rep. Cansler responded. Rep. Capps questioned the effect on the gift tax. Rep. Cansler advised it would not affect it. Rep. Baddour questioned relief given to people other than family members. Rep. Cansler responded. Mr. David Crotts, Fiscal Research made additional comments. Rep. Gamble asked about "pick-up taxes" and Rep. Cansler gave an example. Rep. Brawley made additional comments in response to other members comments. Mr. Crotts read the figures for the fiscal note for 1993. Rep. Neely spoke on personal exemptions of the bill. Rep. Hensley questioned him about inflation and Rep. Neely responded. Rep. Decker wanted to know which other states have this type of legislation. Ms. Cindy Avrette, Research Division answered. Rep. McMahan asked if other states had lower exemption rates to be more competitive and Mr. Crotts responded.

Rep. C. Wilson sent forth an amendment. Ms. Sabre Fairies, Assistant Secretary, Department of Revenue explained the amendment and why the Department of Revenue had requested this. Rep. Hackney questioned Ms. Fairies and she responded. Rep. Luebke questioned the fiscal impact and staff responded. Rep. Decker asked about eliminating the marriage penalty tax and Rep. Neely responded to him. The vote was taken on the amendment and was adopted.

Rep. Allred came forward to explain the Homestead Exemption of the bill.

Rep. McMahan sent forth an amendment which incorporated HB-19 and HB-20 into this bill. Mr. Bostic, Fiscal staff, gave an explanation of the fiscal note.

Reps. Decker, and Hensley spoke and asked questions. Rep. McMahan and Ms. Avrette gave additional explanation for non-profits. Ms. Jane Kendall, NC Center for Non-Profits, addressed members and gave explanation for Rep. Hensley's questions/comments. Rep. Allred also spoke.

The vote was taken on Rep. McMahan's amendment and was adopted.

Rep. Capps sent forth an amendment and Chairman Gray read it. Rep. Capps explained his amendment. Mr. Crotts again gave a fiscal explanation. Rep. Cansler made additional comments of the federal and state tax differences. Rep. Gamble and Rep. Womble asked for more explanation and Mr. Bostic responded. Rep. Baddour questioned the inheritance tax if no action is taken and Rep. Cansler responded. Rep. Luebke questioned the gift tax and Rep. Cansler and Ms. Avrette responded. Rep. Luebke made additional comments.

The meeting adjourned at 10:55.

Rep. Lyons Gray, Chairman

Cindy Brooks, Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

TUESDAY, MAY 26, 1998

CALL TO ORDER

BILLS FOR DISCUSSION:

HB-1077 Massage and Bodywork Therapy	Rep. Clary
SB1092 Eliminate State Food Tax	Sen. Hoyle

ADJOURNMENT:

THE FOLLOWING IMAGE(S)

IS NOT A DOUBLE FEED

BUT AN ADDITIONAL

DOCUMENT PASTED/

TAPED OVER THE

ORIGINAL DOCUMENT

Not Passed
no time

ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1077
Proposed Committee Substitute H1077-PCS1508

Short Title: Massage and Bodywork Therapies. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT REGULATING THE PRACTICE OF MASSAGE AND BODYWORK THERAPY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 36.

"Massage and Bodywork Therapy Practice.

"**§ 90-620. Short title.**

This Article shall be known as the North Carolina Massage and Bodywork Therapy Practice Act.

"**§ 90-621. Declaration of purpose.**

The General Assembly recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapy is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.

"**§ 90-622. Definitions.**

The following definitions apply in this Article:

(1) Board. -- The North Carolina Board of Massage and Bodywork Therapy.

(2) Board-approved school. -- Any massage and bodywork therapy school or training program in this State or another state that has met the criteria established by the Board.

(3) Massage and bodywork therapy. -- Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:

a. Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.

b. Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.

c. The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.

(4) Massage and bodywork therapist. -- A person licensed under this Article.

(5) Practice of massage and bodywork therapy. -- The application of massage and bodywork therapy to any person for a fee or other consideration. 'Practice of massage and bodywork therapy' does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"**§ 90-623. License required.**

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including 'massage therapist', 'bodywork therapist', 'masseur', 'masseuse', 'massagist', 'somatic practitioner', 'body therapist', 'structural integrator', or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term 'massage therapist' or 'bodywork therapist' or any other term that implies a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title 'Licensed Massage and Bodywork Therapist'. No other person shall assume this title or use an abbreviation or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

"**§ 90-624. Exemptions.**

Nothing in this Article shall be construed to prohibit or affect:

(1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.

(2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(3) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under this Article.

(4) Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.

(5) A person giving massage and bodywork therapy to members of that person's immediate family.

(6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

(7) The practice of techniques that are specifically intended to affect the human energy field.

"**§ 90-625. North Carolina Board of Massage and Bodywork Therapy.**

(a) The North Carolina Board of Massage and Bodywork Therapy is created. The Board shall consist of seven members who are residents of this State and are as follows:

(1) Five members shall be massage and bodywork therapists who have been licensed under this Article and have been in the practice of massage and bodywork therapy for at least five of the last seven years prior to their serving on the Board. The appointments shall be made from lists provided by those covered in this Article. Consideration shall be given to geographical distribution, practice setting, clinical specialty, and other factors that will promote diversity of the profession on the Board. One of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and three shall be appointed by the Governor.

(2) The remaining two members shall be members of the general public who shall not be licensed under this Article or the spouse of a person who is so licensed, or have any financial interest, direct or

indirect, in the profession regulated. One of these members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member of the Board shall serve for a term of three years, ending on June 30 of the last year of the term. A member shall not be appointed to serve more than two consecutive terms.

(d) The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business but no less than twice a year. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

"**§ 90-626. Powers and duties.**

The Board shall have the following powers and duties:

(1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage and bodywork therapy practice.

(2) Evaluate the qualifications of applicants for licensure under this Article.

(3) Issue, renew, deny, suspend, or revoke licenses under this Article.

(4) Reprimand or otherwise discipline licensees under this Article.

(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.

(7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.

(8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.

(9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the

Board, including rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapy establishments. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.

(10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.

(11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.

(12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.

(13) Provide a system for grievances to be presented and resolved.

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective.

"§ 90-627. Custody and use of funds.

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article.

"§ 90-628. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the State treasury.

(b) The schedule of fees may include the following and may be adjusted as the Board deems necessary:

(1)	Application for examination	$150.00
(2)	License fee	100.00
(3)	License renewal	75.00
(4)	Late renewal penalty	50.00
(5)	License by reciprocity	50.00
(6)	Duplicate license	15.00
(7)	Provisional license	100.00.

"§ 90-629. Requirements for licensure.

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

(1) Has obtained a high school diploma or equivalent.

(2) Is 18 years of age or older.

(3) Is of good moral character as determined by the Board.
(4) Has successfully completed a course of study consisting of a minimum of 500 classroom hours of supervised instruction at a Board-approved school.
(5) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board.

"**§ 90-630. Reciprocity.**

(a) An applicant shall be eligible for licensure if (i) the applicant has been licensed in another state within five years of the application to the Board and the other state has standards for massage and bodywork therapists that are substantially equivalent to those in this State; (ii) the applicant holds a current certification from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets NCCA standards; or (iii) the applicant meets special requirements established by the Board.

(b) Upon receipt of an application for reciprocity, the Board shall contact each jurisdiction that has previously certified or licensed the applicant to determine whether there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

(c) Reciprocity may not be granted if the state in which the applicant is licensed has not granted a similar reciprocity to licensees in this State.

"**§ 90-631. Massage and bodywork therapy schools.**

The Board shall establish rules for the approval of massage and bodywork therapy schools. These rules shall include:

(1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapy.
(2) Standards for faculty and learning resources.
(3) Requirements for reporting changes in instructional staff and curriculum.
(4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapy may make application for approval to the Board. The Board shall grant approval to schools, whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved schools.

"**§ 90-632. License renewal and continuing education.**

The license to practice under this Article shall be renewed every two years. When renewing a license, each licensee shall submit to the Board evidence of the successful

completion of at least 25 hours of study, as approved by the Board, during the immediately preceding two years, in the practice of massage and bodywork therapy.

"**§ 90-633. Disciplinary action.**

The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) The use of drugs or intoxicating liquors to an extent that affects professional competency.

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.

(4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.

(5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules.

(7) The commission of an act of malpractice, gross negligence, or incompetency.

(8) Practice as a licensee under this Article without a valid certificate or renewal.

(9) Engaging in conduct that could result in harm or injury to the public.

(10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapy without successfully completing training approved by the Board in that specialty.

"**§ 90-634. Enforcement; injunctive relief.**

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

(1) Practice of massage and bodywork therapy.

(2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.

(3) Use any title descriptive of any branch of massage and bodywork therapy, as provided in G.S. 90-623, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person has violated or

is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action.

"§ 90-635. Third-party reimbursement.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article.

"§ 90-636. Regulation by county or municipality.

Nothing in this Article shall be construed to prohibit a county or municipality from regulating persons covered by this Article, however, a county or municipality may not impose regulations that are more stringent than those imposed by this Article or that are inconsistent with this Article."

Section 2. Notwithstanding the provisions of G.S. 90-625(a), as enacted in Section 1 of this act, the terms of initial appointments to the North Carolina Board of Massage and Bodywork Therapy shall be as follows:

(1) The terms of the three members appointed by the Governor pursuant to G.S. 90-625(a)(1), as enacted in Section 1 of this act, shall expire June 30, 2001.

(2) The terms of all other members shall expire June 30, 2000.

Section 3. The five initial appointments to the North Carolina Board of Massage and Bodywork Therapy pursuant to G.S. 90-625(a)(1), as enacted in Section 1 of this act, shall satisfy all of the provisions of G.S. 90-625(a)(1), except the licensure requirement, and shall satisfy the provisions of G.S. 90-629(1) through (4), as enacted in Section 1 of this act, except the 500 classroom hours of supervised instruction does not have to be in a curriculum that meets the basic guidelines established by the North Carolina Board of Massage and Bodywork Therapy.

Section 4. If an applicant does not meet the educational or examinations requirements in G.S. 90-629(4) and (5), as enacted in Section 1 of this act, then for a maximum period of two years after the effective date of this act, the Board may permanently waive those requirements and grant a provisional license to the applicant. At the end of two years after the granting of the provisional license, the applicant shall submit evidence to the Board of his or her compliance with the continuing education requirements in G.S. 90-632, as enacted in Section 1 of this act. Upon receipt of proper documentation, the applicant shall be issued a license to practice massage and bodywork therapy. An applicant for a provisional license shall meet the requirements set forth in G.S. 90-629 (1) through (3), as enacted in Section 1 of this act, and shall submit all of the following for consideration by the Board:

(1) Documentation that the applicant has been engaged in the professional practice of massage and bodywork therapy for a minimum of four years prior to the application to the Board.

(2) Documentation of a minimum of 500 hours of professional practice in the field of massage and bodywork therapy during the four years prior to the application to the Board.

(3) Verification that the applicant has been practicing in the State at the time the application is submitted.

(4) Three letters of reference from sources approved by the Board attesting to the sound moral character, professional qualifications, and competence of the applicant.

Section 5. This act becomes effective October 1, 1998, and applies to offenses occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 1077

Short Title: Massage and Bodywork Therapies. (Public)

Sponsors: Representatives Clary; Bonner, Capps, Culp, Dedmon, Earle, Gulley, McAllister, Moore, Morris, Reynolds, Saunders, Sexton, Sherrill, Shubert, Starnes, Thompson, Watson, and Weatherly.

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

April 21, 1997

A BILL TO BE ENTITLED

AN ACT REGULATING THE PRACTICE OF MASSAGE AND BODYWORK THERAPIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 33.

"Massage and Bodywork Therapies Practice.

"**§ 90-520. Short title.**

This Article shall be known as the North Carolina Massage and Bodywork Therapies Practice Act.

"**§ 90-521. Declaration of purpose.**

The General Assembly recognizes that the improper practice of massage and bodywork therapies is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapies is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.

"**§ 90-522. Definitions.**

The following definitions apply in this Article:

(1) Board. -- The North Carolina Board of Massage and Bodywork Therapies.

(2) Board approved school. -- Any massage and bodywork therapies school or training program in this State or another state that has met the criteria established by the Board.

(3) Massage and bodywork therapies. -- Systems of activities applied to the soft tissues of the body for therapeutic, educational, or relaxation purposes. The application may include:

a. Manual techniques.

b. Passive or active stretching within the normal anatomical range of movement.

c. Complementary methods, including the external application of water, heat, cold, lubricants, or other topical preparations.

d. Mechanical devices that mimic or enhance the actions possible by the hands.

(4) Massage and bodywork therapist. -- A person licensed under this Article.

(5) Practice of massage and bodywork therapies. -- The application of massage and bodywork therapies to any person for a fee or other consideration. 'Practice of massage and bodywork therapies' does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"**§ 90-523. License required.**

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including 'massage therapist', 'bodywork therapist', 'masseur', 'masseuse', 'massagist', 'somatic practitioner', 'body therapist', 'structural integrator', or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term 'massage therapist' or 'bodywork therapist' or any other term that implies a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title 'Licensed Massage Therapist' or 'Licensed Bodywork Therapist'. No other person shall assume these titles or use these abbreviations or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

"**§ 90-524. Exemptions.**

Nothing in this Article shall be construed to prohibit or affect:

(1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.

(2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(3) The practice of massage and bodywork therapy by persons duly licensed in another state, territory, or the District of Columbia when incidentally called into this State for consultation with a person licensed under this Article.

(4) Students enrolled in a Board approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.

(5) A person giving massage and bodywork therapy to members of that person's immediate family.

(6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

"**§ 90-525. North Carolina Board of Massage and Bodywork Therapies.**

(a) The North Carolina Board of Massage and Bodywork Therapies is created. The Board shall consist of seven members who are residents of this State and are as follows:

(1) Five members shall be massage and bodywork therapists with at least five years of experience in massage and bodywork practice. The appointments shall be made from lists provided by those covered in this Article. Consideration shall be given to geographical distribution, practice setting, clinical specialty, and other factors that will promote diversity of the profession on the Board. One of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and three shall be appointed by the Governor.

(2) The remaining two members shall be members of the general public who shall not be licensed under this Article or the spouse of a person who is so licensed, or have any financial interest, direct or indirect, in the profession regulated. One of these members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member of the Board shall serve for a term of three years, ending on June 30 of the last year of the term. A member shall not be appointed to serve more than two consecutive terms.

(d) The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business but no less than twice a year. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

"§ 90-526. Powers and duties.

The Board shall have the following powers and duties:

(1) The Board shall at all times represent the diversity within the profession and shall stay informed regarding the various branches of massage and bodywork therapies.

(2) Evaluate the qualifications of applicants for licensure under this Article.

(3) Issue, renew, deny, suspend, or revoke licenses under this Article.

(4) Reprimand or otherwise discipline licensees under this Article.

(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.

(7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.

(8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.

(9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board, including rules related to the approval of massage and bodywork therapies schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapies establishments.

(10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.

(11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.

(12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.

(13) Approve or establish requirements for bodywork therapies schools, instructors, education curriculum, examinations for licensure, the practice of advanced techniques or specialties, and bodywork therapies establishments.

(14) Provide a system for grievances to be presented and resolved.

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective.

"§ 90-527. Custody and use of funds.

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article.

"§ 90-528. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the State treasury.

(b) The schedule of fees may include the following and may be adjusted as the Board deems necessary:

(1)	Application for examination	$150.00
(2)	License fee	100.00
(3)	License renewal	75.00
(4)	Late renewal penalty	50.00
(5)	License by reciprocity	50.00
(6)	Duplicate license	15.00
(7)	Provisional license	100.00.

"§ 90-529. Requirements for licensure.

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

(1) Has obtained a high school diploma or equivalent.

(2) Is 18 years of age or older.

(3) Is of good moral character as determined by the Board.

(4) Has successfully completed a course of study consisting of a minimum of 500 classroom hours of supervised instruction at a Board approved school.

(5) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board.

"§ 90-530. Reciprocity.

(a) An applicant shall be eligible for licensure if the applicant has been licensed in another state that has standards for massage and bodywork therapists that are substantially equivalent to those in this State or the applicant holds a valid certificate from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets NCCA standards.

(b) Upon receipt of an application for reciprocity, the Board shall contact each jurisdiction that has previously certified or licensed the applicant to determine whether there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

(c) Reciprocity may not be granted if the state in which the applicant is licensed has not granted a similar reciprocity to licensees in this State.

"§ 90-531. Massage and bodywork therapies schools.

The Board shall establish rules for the approval of massage and bodywork therapies schools. These rules shall include:

(1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapies.

(2) Standards for faculty and learning resources.

(3) Requirements for reporting changes in instructional staff and curriculum.

(4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapies may make application for approval to the Board. The Board shall grant approval to schools, whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved schools.

"§ 90-532. License renewal and continuing education.

The license to practice under this Article shall be renewed every two years. When renewing a license, each licensee shall submit to the Board evidence of the successful completion of at least 25 hours of study, as approved by the Board, during the immediately preceding two years, in the practice of massage and bodywork therapies.

"§ 90-533. Disciplinary action.

The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) The use of drugs or intoxicating liquors to an extent that affects professional competency.

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.

(4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.

(5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules.

(7) The commission of an act of malpractice, gross negligence, or incompetency.

(8) Practice as a licensee under this Article without a valid certificate or renewal.

(9) Engaging in conduct that could result in harm or injury to the public.

(10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapies without successfully completing training approved by the Board in that specialty.

"§ 90-534. Enforcement; injunctive relief.

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

(1) Practice of massage and bodywork therapies.

(2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.

(3) Use any title descriptive of any branch of massage and bodywork therapies as provided in G.S. 90-523, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person has violated or is about to violate this Article, the court may grant an injunction or take other appropriate action.

"**§ 90-535. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article."

Section 2. Notwithstanding the provisions of G.S. 90-525(a), as enacted in Section 1 of this act, the terms of initial appointments to the North Carolina Board of Massage and Bodywork Therapies shall be as follows:

(1) The terms of the three members appointed by the Governor pursuant to G.S. 90-525(a)(1), as enacted in Section 1 of this act, shall expire June 30, 2000.

(2) The terms of all other members shall expire June 30, 1999.

Section 3. The five initial appointments to the North Carolina Board of Bodywork Therapies pursuant to G.S. 90-525(a)(1), as enacted in Section 1 of this act, shall satisfy all of the provisions of G.S. 90-525(a)(1), except the licensure requirement, and shall satisfy the provisions of G.S. 90-529(1) through (4), as enacted in Section 1 of this act, except the 500 classroom hours of supervised instruction does not have to be in a curriculum that meets the basic guidelines established by the North Carolina Board of Massage and Bodywork Therapies.

Section 4. If an applicant does not meet the educational or examinations requirements in G.S. 90-529(4) and (5), as enacted in Section 1 of this act, then for a maximum period of two years after the effective date of this act, the Board may permanently waive those requirements and grant a provisional license to the applicant. At the end of two years after the granting of the provisional license, the applicant shall submit evidence to the Board of his or her compliance with the continuing education requirements in G.S. 90-532, as enacted in Section 1 of this act. Upon receipt of proper documentation, the applicant shall be issued a license to practice massage and bodywork therapies. An applicant for a provisional license shall meet the requirements set forth in G.S. 90-529 (1) through (3), as enacted in Section 1 of this act, and shall submit all of the following for consideration by the Board:

(1) Documentation that the applicant has been engaged in the professional practice of massage and bodywork therapies.

(2) Documentation of a minimum of 500 hours of professional practice in the field of massage and bodywork therapies.

(3) Verification that the applicant has been practicing in the State at the time the application is submitted.

(4) Three letters of reference from sources approved by the Board attesting to the sound moral character, professional qualifications, and competence of the applicant.

Section 5. This act becomes effective January 1, 1998, and applies to offenses occurring on or after that date.

EXPLANATION OF HOUSE BILL 1077 (PCS):
Massage and Bodywork Therapy

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 20, 1998
SPONSOR: Representative Clary

The PCS for House Bill 1077 creates the "North Carolina Massage and Bodywork Therapy Practice Act." The Act's purpose is to require mandatory licensure of persons engaged in the practice of massage and bodywork therapy to ensure minimum standards of competency and to protect the public health, safety, and welfare. Under current law, a "massage business" is covered by the criminal laws for adult establishments, and is considered an adult establishment if it is "any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors." The only other statutory references to massage is language exempting simple massages and the operation of health clubs from licensure under the physical therapy act and language including massage as an adjunctive therapy under acupuncture.

The Act prohibits a person from practicing or holding himself or herself out as a massage and bodywork therapist without a license from the newly created North Carolina Board of Massage and Bodywork Therapy. The Act defines "massage and bodywork therapy" as systems of activities applied to soft tissues of the body for therapeutic, educational, or relaxation purposes. The Act also prohibits a person from adopting or using any title or description including "massage therapist", "bodywork therapist", "masseur", "masseuse", "massagist", "somatic practitioner", "body therapist", "structural integrator", or any derivation of those terms unless the person is licensed under the Act.

The practice does not include: diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

The Act does not prohibit: the practice of a profession by one licensed, certified or registered under other N.C. laws, the practice of massage and bodywork therapy by a person licensed elsewhere when that person is called into the State to teach a course or to consult with a person licensed under the Act, students enrolled in a Board approved school and completing a clinical

requirement under the supervision of a licensed person, a person giving therapy to members of the person's immediate family, and the practice of movement educators such as dance teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

The requirements of licensure are:

- •high school diploma or equivalent
- •18 years or older
- •good moral character as determined by the Board
- •successful completion of a minimum of 500 classroom hours of supervised instruction at a Board approved school
- •passing an examination administered by an agency approved by the National Commission of Certifying Agencies or an examination administered or approved by the Board.

The schedule of fees for licensure may include the following and may be adjusted as the Board deems necessary:

(1)	Application for examination	$150.00
(2)	License fee	100.00
(3)	License renewal (every two years)	75.00
(4)	Late renewal penalty	50.00
(5)	License by reciprocity	50.00
(6)	Duplicate license	15.00
(7)	Provisional license	100.00

Salaries, expenses, or other Board obligations will be paid out of the above fees.

The Board consists of seven members: five to be licensed under the Article and with at least five years' experience, except that the initial five do not have to be licensed or have completed 500 hours of the required supervised instruction. The remaining two members will be from the general public.

The Act sets out powers and duties of the Board and lists reasons a Board may deny, suspend, revoke, or refuse a license. The Board may seek to enjoin anyone who violates the Act. There is no requirement for direct third-party reimbursement to licensees.

For two years after effective date of the Act, a provisional license may be granted to an applicant who does not meet educational or examination requirements for licensure. At the end of two years after the granting of the provisional license, the applicant must submit evidence of compliance with the continuing education requirements (at least 25 hours of study). The applicant will then be issued a license.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

DRAFT

BILL NUMBER: HB 1077 (Proposed Committee Substitute)

SHORT TITLE: Massage and Bodywork Therapy

SPONSOR(S): Rep. Clary

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Special Revenue Fund	**$310,000**	**$110,000**	**$293,000**	**$143,000**	**$326,000**
EXPENDITURES					
Special Revenue Fund	**$310,000**	**$110,000**	**$293,000**	**$143,000**	**$326,000**

POSITIONS: to be determined by Board

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Massage and Bodywork Therapy

EFFECTIVE DATE: The act is effective October 1, 1998.

BILL SUMMARY: The bill requires mandatory licensure of persons engaged in the practice of massage and bodywork therapy.

ASSUMPTIONS AND METHODOLOGY: Page six of the PCS, lines 24 through 39 outline the possible fees for the North Carolina Board of Massage and Bodywork Therapy. Lines 31 and 32 of page 6 state that the "schedule of fees may include the following and may be adjusted as the Board deems necessary". In order to estimate the potential income generated by HB 1077, this fiscal note assumes the fees listed in the bill will be adopted by the Board.

Rick Rosen, co-director of the Body Therapy Institute, estimates there are 2,000 massage professionals in North Carolina currently eligible for licensure under this bill. Of this number, 800 are certified by the National Certification Board for Therapeutic Massage and Bodywork.

DRAFT

The remaining 1,200 massage professionals will be given provisional licenses until they complete 25 hours of continuing education within two years. New entrants into this field will come from the 11 massage therapy schools located across the state from Asheville to Wilmington. Each school graduates an average of 40 students per year. If all graduates stay in North Carolina and apply for licensure, then 440 exams will be given each year by the Board. Assuming all pass the exam, then 440 new professionals will be licensed each year. Based on these factors, the chart below calculates the fiscal impact of the bill.

			98-99	99-00	00-01	01-02	02-03
License/Prov. License							
Certified	800	$100	$80,000				
Uncertified	1200	$100	$120,000				
New Grads	440/yr	$100	$44,000	$44,000	$44,000	$44,000	$44,000
Renewal		$75			$183,000	$33,000	$216,000
Exam	440/yr	$150	$66,000	$66,000	$66,000	$66,000	$66,000
Total			**$310,000**	**$110,000**	**$293,000**	**$143,000**	**$326,000**

TECHNICAL CONSIDERATIONS: Unlike the statutes for most state Boards and Commissions, HB 1077 PCS has no maximum fee amounts.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: May 20, 1998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1092

Short Title: Eliminate State Food Tax. (Public)

Sponsors: Senators Hoyle, Kerr, Albertson, Ballance, Basnight, Cooper, Dalton, Dannelly, Gulley, Jenkins, Jordan, Kinnaird, Lee, Lucas, Martin of Pitt, Martin of Guilford, Miller, Odom, Perdue, Phillips, Plyler, Purcell, Rand, Reeves, Shaw of Cumberland, Soles, Warren, Weinstein, Wellons, and Winner.

Referred to: Finance.

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE STATE SALES TAX ON FOOD.

The General Assembly of North Carolina enacts:

Section 1. Effective November 1, 1998, G.S. 105-164.4(a)(5) reads as rewritten:

"(5) The rate of ~~two percent (2%)~~ one percent (1%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 2. Effective July 1, 1999, G.S. 105-164.4(a)(5) is repealed.

Section 3. Effective July 1, 1999, Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.13B. Food exempt from tax.**

The taxes imposed by this Article do not apply to food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 4. Sections 2 and 3 of this act become effective July 1, 1999, and apply to sales made on or after that date. The remainder of this act becomes effective November 1, 1998, and applies to sales made on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1092 (Proposed House Committee Substitute)

SHORT TITLE: Reduce North Carolina Taxes

SPONSOR(S): Representative Gray

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($million)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
2% Food Tax Repeal	**(122.8)**	**(184.5)**	**(190.0)**	**(195.7)**	**(201.6)**
Repeal Inheritance Tax		**(52.5)**	**(79.4)**	**(85.7)**	**(92.6)**
Inc. Homestead Exemption		**(9.0)**	**(9.0)**	**(9.0)**	**(9.0)**
Inc. Personal Exemption	**(41.1)**	**(99.1)**	**(133.0)**	**(167.0)**	**(200.5)**
Total - Gen. Fund	**(163.9)**	**(345.1)**	**(411.4)**	**(457.4)**	**(503.7)**

EXPENDITURES (See Technical Considerations)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Counties and cities that levy a property tax

EFFECTIVE DATE: Sections 1 and 2 (sales tax on food) are effective October 1, 1998. Sections 3 and 4 (inheritance tax) become effective January 1, 1999. Sections 5 through 7 (property tax homestead exemption) are effective for taxable years beginning on or after July 1, 1999. Section 8 is effective for taxable years beginning on or after January 1, 1999.

BILL SUMMARY: The bill deals with four major tax issues: 1) eliminates the state sales tax on food, 2) eliminates the state's inheritance tax and retains a state estate tax equal to the federal state death tax credit, 3) increases and indexes the individual income tax personal exemption amount for certain taxpayers, and 4) increases the property tax homestead exemption amount and income eligibility amount and reimburses local governments for the resulting loss.

ASSUMPTIONS AND METHODOLOGY:

REPEAL STATE SALES TAX ON FOOD

The 1996 General Assembly lowered the state sales tax on food items intended for home consumption (defined as those items eligible for purchase with Food Stamps) from 4% to 3%, effective January 1, 1997. The 1997 General Assembly lowered the sales tax on food from 3% to 2% effective July 1, 1998. Section 1 of this proposed committee substitute repeals the remaining 2 cents of the state sales tax on food on October 1, 1998.

The original source of data for the estimate was a 1961 field survey conducted by field auditors of the Department of Revenue assigned to tabulate the impact of eliminating the tax exemption on food. Over the years these numbers have been updated for growth with data from the monthly "type of business establishment" reports of the Department of Revenue. Data from a special tabulation of the Department of Revenue for February and March 1997 indicated that the estimates used in previous fiscal notes were on target. As a check on the data, estimates of food tax exemptions from other states have been reviewed. Furthermore, the estimates are consistent with nationwide food consumption data compiled by the U. S. Department of Commerce (and allocated to North Carolina by the Fiscal Research Division). Based on federal data, the estimated 3% annual growth in food tax purchases is also on target.

The October 1, 1998 reduction will be less than 9 months of revenue loss due to a lag between the retail sale and the remittance of the tax. The full year cost of the 2 cent reduction will be in FY 1999-00.

	STATE FISCAL YEAR ($million)				
	98-99	99-00	00-01	01-02	02-03
BACKGROUND INFORMATION (1)					
CURRENT TAX YIELD (2% effective 7/1/98)	$179.1	$184.5	$190.0	$195.7	$201.6
1 CENT	$89.6	$92.2	$95.0	$97.9	$100.8
REDUCE TO 0 % (10/1/98) (2)	($122.8)	($184.5)	($190.0)	($195.7)	($201.6)

NOTES:
(1) Assumes annual growth of 3%
(2) The effect is less than 75% in the first year due to a lag between the retail sale and the remittance.

ELIMINATE NORTH CAROLINA INHERITANCE TAX

North Carolina has both an inheritance tax and an estate tax. These taxes are borne by the beneficiary. When calculating taxes owed, a determination is made of the net value of the estate and the beneficiary's proportion of that estate. Then inheritance taxes are applied based on the beneficiary's classification. Once a state inheritance tax is determined, that number must be

compared to the State Death Tax Credit (This credit amount is drawn from the federal estate tax form). If the inheritance tax is larger than the State Death Tax Credit, the beneficiary forwards the total inheritance tax to the state. If the credit is larger, a North Carolina Estate Tax is charged to bring the total tax up to the State Death Tax Credit level. As of January 1997 only 17 states, including North Carolina, still retain an inheritance tax. Sections 3 and 4 of this bill repeal the inheritance tax, with the net effect of expanding the state estate or "pick-up" tax.

The Tax Research Division of the Department of Revenue provided data based on inheritance tax returns filed and closed out in 1993. The loss associated with the 1993 data equals $42.3 million, or 45.1% of total potential inheritance tax collections, in General Fund revenue. This percentage loss was applied to current 1999-00 inheritance tax collections estimates. Future years were forcasted based on the expected growth rate in inheritance tax collections as defined in the North Carolina model (7.986%). A one time 5% adjustment was included to capture the impact of the increase in the federal unified credit and its influence on the State Death Tax Credit. No FY 1998-99 fiscal impact is shown for this item because there is a nine month lag in the payment of inheritance taxes. For example, if a benefactor dies on January 1, 1999 the inheritance tax paid by their beneficiaries would not be due until September 1, 1999, which is the next fiscal year. The estimate for FY 1999-00 has also been reduced to allow for this lag factor.

It should be noted that the federal government requires that beneficiaries pay at least the amount of the death tax credit to the state, or the federal government will retain the balance. As such, reducing a North Carolina beneficiary's total tax liability to below the State Death Tax Credit level will only result in additional funds to the federal government. The beneficiary's total tax liability will not change.

PROPERTY TAX HOMESTEAD EXEMPTION

The Homestead Exemption is a partial exemption from property taxes for the residence of a person who is either aged 65 or older, or totally disabled, and who has an income of less than $15,000. The exemption amount was last increased in 1996, when it was increased from $15,000 to $20,000 effective July 1, 1997. Before then the exemption was last increased in 1993 from $12,000 to $15,000. The income eligibility amount was last increased in 1996, when it was increased from $11,000 to $15,000. Before then the income threshold had last been increased in 1987, when it was increased from $10,000 to $11,000.

Sections 5 and 6 of the proposed bill increase the Homestead Property Tax Exemption amount for the elderly and disabled from $20,000 to $25,000 and increase the income eligibility threshold from $15,000 to $25,000. Section 7 of the proposal holds counties and cities harmless for the loss attributable to the increase proposed by the bill. As such, the full financial cost of the expansion of the Homestead Exemption will be borne by the state.

The current annual cost of the Homestead Exemption program is approximately $27 million. That cost is divided between the state and the counties. History indicates that approximately 80% of the total cost is related to the property exemption and 20% is related to the income requirement. The proposed act increases the value of exempt property 25% and increases the

income threshold 66.7%. If 80% of the cost or $21.6 million is devoted to exempt property, then a 25% increase in the exemption equals $(5.4) million. If 20% of the cost of the program is devoted to the income threshold or $5.4 million, then a 66.7% increase in the threshold equals ($3.6) million. The $9 million increase in the cost of the Homestead Exemption will be borne by the state.

INCREASE AND INDEX PERSONAL EXEMPTIONS

Section 8 of the proposed bill sets the state personal exemption rate equal to the federal personal exemption amount each year beginning in tax year 1999. The General Assembly last increased the personal exemption amount to the federal rate in 1995, but did not index it for inflation. The current state personal exemption is $2500, while the federal personal exemption rate for tax year 1999 is $2750. The rates are set each year by increasing the prior year amounts by the CPI, then round down to the nearest $50. The projected rates for tax years 1999 to 2003 are follows:

	State	1998	1999	2000	2001	2002	2003
Personal Exemption	$2,500	$2,700	$2,750	$2,850	$2,950	$3,050	$3,150
CPI		1.032	1.031	1.03	1.034	1.033	1.035

To estimate the fiscal impact of this proposal on the General Fund, these rates were entered into the Individual Income Tax computer model used by the Department of Revenue, the Fiscal Research Division, and the Office of State Budget and Management. The results from the model were checked against the 1994 Individual Income Tax Detail Report issued by the Department of Revenue. Manual calculations were consistent with the model projections.

The first year impact in FY 98-99 equals half the loss for tax year 1999 ($41.1 million) due to taxpayers adjusting their withholding tables and their estimated payments in January through June of 1999. The impact for each following year is half of one tax year plus half of the next tax year. For example, the FY 99-00 estimate of $99.1 million is half of tax year 1999 ($41.1 million) plus half of tax year 2000 ($58 million).

The personal exemption amount remains $2,000 for those with the following adjusted gross income:

Married filing jointly	$100,000
Head of Household	$80,000
Single	$60,000
Married filing separately	$50,000

TECHNICAL CONSIDERATIONS:

I. Food Tax - The Department of Revenue estimates that each change in the sales tax rate cost the department $100,000 to hire temporary employees to review error returns and process assessments generated by errors. The Department also estimates that another $19,000 is spent on accounting and computer system changes. **However , it should be noted that when the food tax reduction from 4% to 3% was implemented in 1997, the administrative cost was absorbed in the Department's budget. There was also no appropriation made for the food tax reduction scheduled for July 1, 1998.**

II. Inheritance Tax - Although the inheritance tax is repealed, the State would maintain compliance with the Federal Estate Tax (pick-up tax). With the Federal pick-up tax still in place, a portion of the returns that are currently filed would continue to be required. For example in FY 1996-97 there were 7,931 Inheritance Tax returns. Of that number, the Department estimated that 35% or 2,776 required filing under the Federal pick-up

The Department could abolish two of the six employees in Office Examinations who work with Inheritance Tax and with Gift Tax. Two positions are needed for the Gift Tax portion. At least two will be needed for the changed State estate tax and to work with the existing Inheritance Tax files until they are all resolved. The Department could abolish the remaining two positions and save $52,453, but would like to reallocate these positions to the Correspondence Unit that was created in 1997 . This unit resolves correspondence not attached to payments before that correspondence is referred to audit in Office Examinations, to administrative officers in Office Services, or to Tax Administration. If the bill is enacted, the Appropriations Committee in the 1999 Session should determine the number of personnel needed in this section.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps & Richard Bostic
APPROVED BY:
DATE: May 24, 1998

EXPLANATION OF SENATE BILL 1092:
PROPOSED HOUSE COMMITTEE SUBSTITUTE
Reduce North Carolina Taxes

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: May 20, 1998
SPONSOR: Senator Hoyle

Senate Bill 1092, as passed by the Senate, reduces the State sales tax on food from 2% to 1%, effective November 1, 1998, and repeals the State sales tax on food, effective July 1, 1999. The **proposed House Committee Substitute** not only eliminates the State sales tax on food, but also reduces several other taxes:

- It repeals the remaining 2% State sales tax on food, effective October 1, 1998.
- It eliminates the State's inheritance tax, effective January 1, 1999.
- It increases the property tax homestead exemption amount and income eligibility amount to $25,000.
- It increases and indexes the individual income tax personal exemption for middle- and low-income taxpayers, effective January 1, 1999.

Repeal State Sales Tax on Food

In 1996, the General Assembly reduced the State sales tax on food from 4% to 3%, effective January 1, 1997. Last year, the General Assembly reduced the State sales tax on food from 3% to 2%, effective July 1, 1998. This bill completes the reduction by eliminating the remaining 2% State sales tax on food, effective October 1, 1998.

The sale of tangible personal property in North Carolina is subject to a 4% State sales tax unless it is specifically exempt from the tax. In 1971, 1983, and 1985, the General Assembly passed legislation allowing local governments to impose a local sales tax. The local sales tax rate is 2%. On most tangible personal property, the combined State and local sales tax rate in North Carolina is 6%. However, because of past legislation reductions, the combined State and local sales tax rate on food, effective July 1, 1998, will be 4%. This bill repeals the State's remaining 2% sales tax rate on food, but it retains the 2% local sales tax rate. Therefore, effective October 1, 1998, there will only be a local 2% sales tax on food.

The sales tax on food applies to food that may be purchased with food stamps. Federal law determines what can be purchased with food stamps and, therefore, what food is exempt from the State sales tax. Food purchased with food stamps is exempt from both the State and the local sales tax.

Eliminates the State Inheritance Tax

Section 3 of this bill repeals the State's inheritance tax and Section 4 of this bill retains a State estate tax that is equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of State estate tax is known as a "pick-up" tax because it picks up for the State the amount of federal estate tax that would otherwise be paid to the federal government. The repeal of the State's inheritance tax is effective January 1, 1999, and applies to the estates of decedents dying on or after that date.

North Carolina imposes an inheritance tax on property transferred by a decedent. The amount of tax payable depends on the relationship of the person transferring the property (the decedent) to the person receiving the property (the beneficiary). This is in contrast to federal law, which has a single rate schedule for estates.

State law classifies beneficiaries into three classes, Class A, Class B, and Class C, and sets different inheritance tax rates for each class. A Class A beneficiary is a lineal ancestor, a lineal descendant, an adopted child, a step-child, or a son-in-law or daughter-in-law whose spouse is not entitled to any of the decedent's property. A Class B beneficiary is a sibling, a descendant of a sibling, or an aunt or uncle by blood. A Class C beneficiary is anyone who is not a Class A or Class B beneficiary.

Class A beneficiaries have the lowest inheritance tax rates and a $600,000 inheritance tax exemption. Class B beneficiaries have higher rates and no exemption. Class C beneficiaries have the highest rates and no exemption. Thus, North Carolina's rate structure favors transfers to children and parents by giving those transfers the lowest rates plus an exemption and prefers transfers to other close family members over transfers to more distant relatives or to persons who are not related.

Property Tax Homestead Exemption

Sections 6, and 7 of the bill expand the property tax homestead exemption amount from $20,000 to $25,000 and increase the income eligibility amount from $15,000 to $25,000, effective July 1, 1999. Section 8 of the bill provides a State

reimbursement to local governments for their additional revenue loss as a result of this change.

The homestead exemption is a partial exemption from property taxes for the residence of a person who is either aged 65 or older or totally disabled and who has an income of less than $15,000. The income used to determine the income eligibility amount includes moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses is included, whether or not the property is in both names.

The exemption amount was last increased in 1996, when it was increased from $15,000 to $20,000 effective July 1, 1997. Before then, the exemption amount had last been increased in 1993 from $12,000 to $15,000. The income eligibility amount was last increased in 1996, when it was increased from $11,000 to $15,000 effective July 1, 1997. Before then, the income threshold had last been increased in 1987, when it was increased from $10,000 to $11,000.

Increase and Index Personal Exemption

Section 9 of the bill provides an automatic annual income tax reduction for individuals whose adjusted gross income is less than the applicable amount listed below:

Married Filing Jointly	$100,000
Head of Household	80,000
Single	60,000
Married filing separately	50,000.

The bill increases the State income tax personal exemptions for these taxpayers to the amount of the federal personal exemptions, and provides that the exemption amounts will increase automatically each year at the same rate as the federal exemptions, based on the rate of inflation. The section of the bill becomes effective beginning with the 1999 tax year. Increasing the personal exemption amounts reduces State income taxes for the individuals who adjusted gross income falls below the stated amount.

The State's personal exemption amounts were increased in 1995 in two stages, from $2,000 to $2,250 for the 1995 tax year and then to $2,500 for the 1996 tax year. The federal personal exemption amounts increase automatically each year to keep pace with inflation. The federal amount for the 1997 tax year was $2,650 and is expected to increase about $50 each year thereafter.

Increasing the State's personal exemption amounts to the federal amounts and allowing them to grow at the same pace in future years has three benefits. First, it reduces State personal income taxes for all North Carolina citizens whose income falls below the stated amount. Families with children receive a larger tax reduction because a personal exemption deduction is allowed for the taxpayer, the spouse, and each dependent. Second, it allows the State tax structure to respond automatically to inflation. If the personal exemption amounts are not indexed to inflation, taxpayer's taxes increase automatically each year because the value of their income is inflated, even if, in real terms, they make the same amount of income or less income each year. Third, it greatly simplifies tax filing for the affected taxpayers. North Carolina's individual income tax uses federal taxable income as the starting point for calculating North Carolina taxable income. As long as North Carolina's personal exemptions are not indexed to the federal amounts, every taxpayer must perform an extra calculation to adjust for the gap by adding back to federal taxable income the difference between the lower North Carolina personal exemption amount and the higher federal personal exemption amount.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1092

SHORT TITLE: Eliminate Food Tax

SPONSOR(S): Senators Hoyle, et al

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
1% Repeal 11/1/98	**(53.9)**	**(92.2)**	**(95.0)**	**(97.9)**	**(100.8)**
1% Repeal 7/1/99	____	**(86.3)**	**(95.0)**	**(97.9)**	**(100.8)**
Total	**(53.9)**	**(178.5)**	**(190.0)**	**(195.8)**	**(201.6)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue- Sales Tax Division

EFFECTIVE DATE: The first reduction from 2% to 1% is effective November 1, 1998 and the second reduction from 1% to 0 is effective July 1, 1999.

BILL SUMMARY: The 1996 General Assembly lowered the state sales tax on food items intended for home consumption (defined as those items eligible for purchase with Food Stamps) from 4% to 3%, effective January 1, 1998. The 1997 General Assembly lowered the sales tax on food from 3% to 2% effective July 1, 1998. This proposed bill reduces the state tax from 2% to 1% on November 1, 1998 and from 1% to 0 on July 1, 1999.

ASSUMPTIONS AND METHODOLOGY: The original source of data for the estimate was a 1961 field survey conducted by field auditors of the Department of Revenue assigned to tabulate the impact of eliminating the tax exemption on food. Over the years these numbers have been updated for growth with data from the monthly "type of business establishment" reports of the Department of Revenue. Data from a special tabulation of the Department of Revenue for February and March 1997 indicates that the estimates used in previous fiscal notes are on target.

As a check on the data, estimates of food tax exemptions from other states have been reviewed. Furthermore, the estimates are consistent with nationwide food consumption data compiled by the U. S. Department of Commerce (and allocated to North Carolina by the Fiscal Research Division). Based on federal data, the estimated 3% annual growth in food tax purchases is also on target.

With a November 1 effective date, the first year revenue loss is for eight months minus a lag between the retail sale and the remittance of the tax in November. The full year cost of the 1998 reduction will be in FY 1999-00. The July 1, 1999 reduction will also be less than 12 months of revenue loss due to a lag between the retail sale and the remittance of the tax. The full year cost of that 1 cent reduction will be in FY 2000-01.

REPEAL STATE FOOD TAX

($MILLIONS)

STATE FISCAL YEAR

	98-99	99-00	00-01	01-02	02-03
BACKGROUND INFORMATION (1)					
CURRENT TAX YIELD (2% effective 7/1/98)	$179.1	$184.5	$190.0	$195.7	$ [redacted] 6
1 CENT	$89.6	$92.2	$95.0	$97.9	$ [redacted]
REDUCE TO 1.0% (11/1/98)	($53.9)	($92.2)	($95.0)	($97.9)	($100.8)
REDUCE TO 0% (7/1/99) (2)		($86.3)	($95.0)	($97.9)	($100.8)

NOTES:
(1) Assumes annual growth of 3%
(2) The effect is less than 100% in the first year due to a lag between the retail sale and the remittance.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: May 12, 1998

FISCAL ANALYSIS MEMORANDUM

DATE: May 26, 1998

TO: House Finance Committee

FROM: Richard Bostic RB
Fiscal Research Division

RE: Amendment to SB 1092 (House PCS)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES - General Fund					
Index Personal Exemption					
House PCS - cap	**(41.1)**	**(99.1)**	**(133.0)**	**(167.0)**	**(200.5)**
Amendment - no cap	**(56.1)**	**(133.0)**	**(175.3)**	**(219.2)**	**(264.2)**
Net Change	**(15.0)**	**(33.9)**	**(42.3)**	**(52.2)**	**(63.7)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Effective for taxable year beginning on or after January 1, 1999.

BILL SUMMARY: The proposed amendment would index personal exemptions to federal amounts, but remove the income caps placed on personal exemptions in 1995.

ASSUMPTIONS AND METHODOLOGY:

The personal exemption amount is currently $2,000 for those with the following adjusted gross income:

Married filing jointly	$100,000
Head of Household	$80,000
Single	$60,000
Married filing separately	$50,000

The proposed amendment would eliminate these income caps and conform state personal exemptions with those in the federal code. There would no longer be a need to do an addback to taxable income on the North Carolina individual income tax form for the difference in state and federal personal exemptions. For example, in 1998 the state exemption would rise from $2500 to $2700 for all income groups and tax filers. (Note: The state conforms to the phase-out of the personal exemption at the highest income levels.)

The cost for this amendment was derived from the Individual Income Tax computer model used by the Department of Revenue, the Fiscal Research Division, and the Office of State Budget and Management. The microsimulation model uses actual state and federal tax return data from tax year 1994 to estimate the impact of tax changes on the General Fund.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1092
Proposed Committee Substitute S1092-PCS1933

Short Title: Reduce North Carolina Tax. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE STATE SALES TAX ON FOOD, TO ELIMINATE THE STATE'S INHERITANCE TAX AND RETAIN A STATE ESTATE TAX EQUAL TO THE FEDERAL STATE DEATH TAX CREDIT, TO INCREASE AND INDEX THE INDIVIDUAL INCOME TAX PERSONAL EXEMPTION AMOUNT FOR CERTAIN TAXPAYERS, AND TO INCREASE THE PROPERTY TAX HOMESTEAD EXEMPTION AMOUNT AND INCOME ELIGIBILITY AMOUNT AND REIMBURSE LOCAL GOVERNMENTS FOR THE RESULTING REVENUE LOSS.

The General Assembly of North Carolina enacts:

REPEAL STATE SALES TAX ON FOOD.

Section 1. G.S. 105-164.4(a)(5) is repealed."

Section 2. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.13B. Food exempt from tax.**

The taxes imposed by this Article do not apply to food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

ELIMINATE NORTH CAROLINA INHERITANCE TAX.

Section 3. Article 1 of Chapter 105 of the General Statutes is repealed.

Section 4. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.
"Estate Taxes.

"§ 105-32.1. Definitions.

The following definitions apply in this Article:

(1) Code. -- Defined in G.S. 105-228.90.

(2) Personal representative. -- The person appointed by the clerk of superior court under Chapter 28A of the General Statutes to administer the estate of a decedent or, if no one is appointed under that Chapter, the person required to file a federal estate tax return for the estate of the decedent.

(3) Secretary. -- Defined in G.S. 105-228.90.

"§ 105-32.2. Estate tax imposed in amount equal to federal state death tax credit.

(a) Tax. -- An estate tax is imposed on the estate of a decedent when a federal estate tax is imposed on the estate under section 2001 of the Code and any of the following apply:

(1) The decedent was a resident of this State at death.

(2) The decedent was not a resident of this State at death and owned any of the following:

a. Real property or tangible personal property that is located in this State.

b. Intangible personal property that has a tax situs in this State.

(b) Amount. -- The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the Code. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate.

"§ 105-32.3. Liability for estate tax.

(a) Primary. -- The tax imposed by this Article is payable from the assets of the estate. A person who receives property from an estate is liable for the amount of estate tax attributable to that property.

(b) Personal Representative. -- The personal representative of an estate is liable for an estate tax that is not paid within two years after it was due. This liability is

limited to the value of the assets of the estate that were under the control of the personal representative. The amount for which the personal representative is liable may be recovered from the personal representative or from the surety on any bond filed by the personal representative under Article 8 of Chapter 28A of the General Statutes.

(c) Clerk of Court. -- A clerk of court who allows a personal representative to make a final settlement of an estate without presenting one of the following is liable on the clerk's bond for any estate tax due:

(1) An affirmation by the personal representative certifying that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.

(2) A certificate issued by the Secretary stating that the tax liability of the estate has been satisfied.

"**§ 105-32.4. Payment of estate tax.**

(a) Due Date. -- The estate tax imposed by this Article is due when an estate tax return is due. An estate tax return is due on the date a federal estate tax return is due.

(b) Filing Return. -- An estate tax return must be filed under this Article if a federal estate tax return is required. The return must be filed by the personal representative of the estate on a form provided by the Secretary.

(c) Extension. -- An extension of time to file a federal estate tax return is an automatic extension of the time to file an estate tax return under this Article. The Secretary may, in accordance with G.S. 105-263, extend the time for paying the estate tax imposed by this Article or for filing an estate tax return.

(d) Interest and Penalties. -- The penalties in G.S. 105-236 apply to the failure to file an estate tax return or to pay an estate tax when due. Interest at the rate set in G.S. 105-241.1 accrues on estate taxes paid after the date they are due.

(e) Obtaining Amount Due. -- The personal representative of an estate may sell assets in the estate to obtain money to pay the tax imposed by this Article.

"**§ 105-32.5. Making installment payments of tax due when federal estate tax is payable in installments.**

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal estate tax under section 6166 of the Code. Acceleration of payments under section 6166 of the Code accelerates the payments due under this section.

"**§ 105-32.6. Estate tax is a lien on real property in the estate.**

The tax imposed by this Article on an estate is a lien on the real property in the estate and on the proceeds of the sale of the real property in the estate. The lien is extinguished when one of the following occurs:

totally and permanently disabled whose income does not exceed ~~fifteen thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above ~~fifteen thousand dollars ($15,000),~~ twenty-five thousand dollars ($25,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 7. G.S. 105-277.1A reads as rewritten:

"**§ 105-277.1A. Property classified for taxation at reduced valuation; duties of tax collectors; reimbursement of localities for portion of tax lost.**

(a) On September 1, 1990, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue a list containing the name and address of each person who has qualified in that year for the exemption provided in G.S. 105-277.1. The list shall also contain for each name the total amount of property exempted, the tax rate the property is subject to, and the product obtained by multiplying those two numbers by each other. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall all be on a form prescribed by the Secretary of Revenue.

(a1) On December 1, 1997, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above eleven thousand dollars ($11,000) and the second list shall include those taxpayers whose income was eleven thousand dollars ($11,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above fifteen thousand dollars ($15,000) exempted. On both lists, the tax collector shall provide the tax rate the property is subject to and the product obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(a2) On December 1, 1999, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above fifteen thousand dollars ($15,000) and the second list shall include those taxpayers whose income was fifteen thousand dollars ($15,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above twenty thousand dollars ($20,000) exempted. On both lists, the tax collector shall provide the tax rate the property is subject to and the product obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 15.1(c)

(c) The Secretary of Revenue may, for cause, grant an extension for the submission of a list required by this section.

(d) Before May 31, 1991, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for the entire list provided pursuant to subsection (a) of this section of the product obtained by multiplying the tax exemption for each taxpayer times the applicable tax rate. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city that was entitled to receive a distribution under this subsection in 1991 the amount it was entitled to receive in 1991.

(d1) Before May 31, 1998, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for both lists provided the preceding December 1 pursuant to subsection (a1) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Before May 31, 1999, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 1998.

(d2) Before May 31, 2000, the Secretary of Revenue shall distribute to the county or city the total for both lists provided the preceding December 1 pursuant to subsection (a2) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 2000.

(e) Any funds received by any county or city pursuant to this section because the county or city was collecting taxes for another unit of government or special district shall be credited to the funds of that other unit or district in accordance with regulations issued by the Local Government Commission.

(f) In order to pay for the reimbursement under this section and the cost to the Department of Revenue of administering the reimbursement, the Secretary of Revenue shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the reimbursement and the cost of administration."

INCREASE AND INDEX PERSONAL EXEMPTIONS.

Section 8. G.S. 105-134.6(c)(4a) reads as rewritten:

"(4a) The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the ~~Code. This amount is reduced by five hundred dollars ($500.00) for each personal exemption~~ Code if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is ~~less than~~ equal to or greater than the following amounts:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage."

EFFECTIVE DATES.

Section 9. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that was available under the amended or repealed statute before the effective date of its amendment or repeal.

Section 10. Sections 1 and 2 of this act become effective October 1, 1998, and apply to sales made on or after that date. Sections 3 and 4 of this act become effective January 1, 1999, and apply to the estates of decedents dying on or after that date. Sections 5 through 7 of this act are effective for taxes imposed for taxable years beginning on or after July 1, 1999. Section 8 of this act is effective for taxable years beginning on or after January 1, 1999. The remainder of this act is effective when it becomes law.

Groups Urging You to Support Charitable Giving Tax Incentives

Now is the time. Help nonprofits help our communities.

House Bills 19 and 20

These organizations ask you to increase the deduction allowed for charitable contributions by businesses (applies mostly to small business) and increase the tax credit for charitable giving by taxpayers who do not itemize their deductions (71% of taxpayers, mostly with modest incomes).

Businesses and business associations statewide:

National Federation of Independent Business
N.C. Citizens for Business & Industry
N.C. Retail Merchants Association

BellSouth
Carolina Power & Light Company
Glaxo Wellcome Inc.
IBM Corporation
NationsBank
Nortel/Northern Telecom, Inc.

Nonprofit organizations serving communities across the state:

Adolescent Pregnancy Prevention Coalition of N.C. (statewide)
AIDS Care Service, Inc., Winston-Salem
AIDS Leadership Foothills-Area Alliance, Hickory
Agricultural Resources Center (statewide)
Albemarle Downtown Development Corporation, Albemarle
Alcohol/Drug Council of N.C. (statewide)
Alexander Children's Center, Charlotte
Allied Churches of Alamance Co. Inc., Burlington
Alzheimer's Association, Western N.C. Chapter, Asheville
Alzheimer's Association, South Piedmont Chapter, Charlotte
Alzheimer's Association, Piedmont Triad Chapter, Winston-Salem
Alzheimer's Association, Eastern N.C. Chapter, Raleigh
American Lung Association of N.C. (statewide)
American Red Cross, Triangle Area Chapter
American Red Cross, Greater Carolinas Chapter, Charlotte
Animal Rescue and Foster Program, High Point
The Arc of Orange County, Chapel Hill
The Arc of Union County, Monroe
ARTS North Carolina (statewide)
Arts Council of Carteret Co., Morehead City
Arts Council for Davidson County, Lexington
Arts Council of Moore County, Southern Pines
Arts Council of Winston-Salem and Forsyth Co., Winston-Salem
Arts & Science Center, Statesville
Artspace, Raleigh
Autism Foundation of NC (statewide)
Avery County Humane Society, Newland
Baptist Children's Homes of N.C., Inc. (statewide)
Benson Children's Home, Benson
The Bethesda Center, Winston-Salem
Better Health of Cumberland County, Fayetteville
Black Mountain Center Foundation, Black Mountain
Blue Ridge Literacy Council, Hendersonville
Boone Cooperative Preschool, Boone
Botanical Garden at Asheville, Asheville
BoysCamp, Eden
Brunswick Community College Foundation, Supply
Building Assets, Inc., Forest City
Cabarrus Memorial Hospital Foundation, Concord
Caldwell Arts Council, Lenoir
Caldwell Council on Adolescent Health, Lenoir
Calvary Ministries of the Westend Community, Inc., Durham
Cape Fear Botanical Garden, Fayetteville
Cape Fear Literacy Council, Wilmington
Cape Fear United Way, Wilmington
Capital Area Preservation, Inc., Raleigh
Capital Towers, Inc., Raleigh
Caring Services, Inc., Greensboro
Catawba County United Way, Inc., Hickory
Carolina Farm Stewardship Association (statewide)
Carolina Justice Policy Center (statewide)
Carolina Theatre of Durham, Inc., Durham
Carteret Arts Council, Morehead City
Center for Community Self-Help, Asheville, Durham, Charlotte, and Greensboro
Center of Living Home Health and Hospice, Asheboro
The CFIDS Association of America, Charlotte
Chapel Hill Training Outreach Project, Inc., Chapel Hill
Charlotte Emergency Housing, Inc., Charlotte

Groups Urging You to Support Incentives to Increase Charitable Giving (Continued)

Charlotte-Mecklenburg Urban League, Charlotte
Chatham County Council on Aging, Pittsboro
Chatham County Group Homes, Inc., Siler City
Child Care Directions, Lumberton
Child Care Resource and Referral of Alamance, Burlington
Christian Ministry of Lincoln County, Lincolnton
Cleveland County Abuse Prevention Council, Shelby
Cleveland County Community Development Corporation, Shelby
Coastal Women's Shelter, New Bern
Colburn Gem & Mineral Museum, Asheville
Collaborative Support Services, Greensboro
Community Foundation of Western North Carolina, Asheville (18 counties)
Community General Health Partners, Inc., Thomasville
Community Living, Wilmington
Community Housing Development Corporation, Charlotte
Communities in Schools of Orange County, Hillsborough
ComServ, Inc., Morganton
Concerned Citizens of Tillery, Tillery
Consumer Credit Counseling Service of Forsyth County, Inc., Winston-Salem
Cornucopia House, Chapel Hill (3 counties)
Council for Senior Citizens, Durham
Craven County Council on Women, Inc., New Bern
Crisis Assistance Ministry, Charlotte
Crisis Control Ministry, Winston-Salem
Crohn's and Colitis Foundation-N.C. Chapter, Raleigh
Cued Speech Center, Raleigh
Developmental Disabilities Consortium (statewide)
Dare Voluntary Action Center, Kill Devil Hills
Davie County United Way, Mocksville
Domestic Violence Shelter and Services, Wilmington
Downtown Housing Improvement Corporation, Raleigh
Dulatown Outreach Center, Inc., Lenoir
Durham Affordable Housing Coalition, Durham
EASE, Inc., Durham
Easter Seal Society of N.C. (statewide)
ECO, Inc. (Energy Committed to Offenders), Charlotte
Eliada Homes, Asheville
Family Counseling Service, Durham
Family Services of Gaston, Gastonia
Family and Children's Service of Greater Greensboro, Greensboro
Family Life Council of Greater Greensboro, Inc., Greensboro
Family Services, Inc., Raleigh
Family Services, Inc., Winston-Salem
Family YMCA, Goldsboro
Fayetteville Urban Ministry, Fayetteville
Forsyth County Day School, Lewisville
Foundation for the Carolinas, Charlotte (9 counties)
Four Seasons Hospice, Hendersonville
Friends of N.C. Senior Tarheel Legislature, Inc., Mt. Airy
Friends of the WNC Nature Center, Asheville
Fund for Human Possibility, Chapel Hill
Goodwill Industries of Eastern North Carolina, Durham (40 counties)
Goodwill Industries of the Southern Piedmont, Charlotte
Greensboro Cerebral Palsy Association, Greensboro
Greensboro Historical Museum, Greensboro
Guilford Native American Association, Greensboro
The G-WIS Foundation, Cary
Habitat for Humanity of Forsyth County, Winston-Salem
Habitat for Humanity of High Point, High Point
Habitat for Humanity of Orange County, Hillsborough
Handmade in America, Asheville
Helpmate of Madison, Inc., Marshall
Highlands Camp & Conference Center, Highlands
H.O.M.E., Inc., Morganton
Home Care Connection, Inc., Pittsboro
HopeLine, Inc., Wake County
Hope Haven, Inc., Charlotte
Hospice for the Carolinas (99 counties)
Hospice of Burke County, Morganton
Hospice of Chatham County, Pittsboro
Hospice of the Piedmont, Inc., High Point
Hospice of Rockingham County, Wentworth
Hospice of Rutherford County, Forest City
Hospice of Winston-Salem, Winston-Salem
Housing for New Hope, Inc., Durham
Institute of Marine and Agriculture Research, Inc. (statewide)
Inter-Faith Council for Social Service, Chapel Hill
Inter-Faith Food Shuttle, Raleigh
International Visitors Council, RTP
Joint Orange-Chatham Community Action, Pittsboro
Thomas S. Kenan Institute for the Arts, Winston-Salem
Land Loss Prevention Project (statewide)
Latin American Association of N.C., Raleigh
Legal Services of North Carolina, Raleigh
Lenoir County United Way, Kinston
Lewis Rathbun Wellness Center, Asheville

Groups Urging You to Support Incentives to Increase Charitable Giving (Continued)

Life Center, Lexington
Lincoln Cultural Center, Lincolnton
Literacy Council of Buncombe County, Asheville
Lutheridge/Lutherock Ministries, Inc., Arden
Macon County Hospice, Franklin
MAGIC Community Gardens, Asheville
MANNA Food Bank, Asheville
Mattamuskeet Foundation, Ayden
March of Dimes Birth Defects Foundation (statewide)
MAY Coalition, Spruce Pine
Mecklenburg Council on Adolescent Pregnancy, Charlotte
Mental Health Association in N.C. (28 counties)
Mental Health Association in Alamance County, Burlington
Methodist Home for Children, Raleigh
Mooresville South Iredell United Way, Mooresville
Mint Museum of Art, Charlotte
Mountain Area Hospice, Asheville
My Sister's House, Inc., Rocky Mount
N.C. Alliance for Arts Education, Carrboro
N.C. Alliance for the Mentally Ill (statewide)
N.C. Association of Community Development Corporations, (statewide)
N.C. Association of Independent Colleges & Universities (institutions in 25 counties)
N.C. Association of Rehabilitation Facilities (87 counties)
N.C. Association of Residential Child Care and Family Services (statewide)
N.C. Center for Nonprofits (statewide)
N.C. Child Advocacy Institute (statewide)
N.C. Child Care Resource & Referral Network (statewide)
N.C. Chiropractic Association (statewide)
N.C. Coalition of Farm and Rural Families (statewide)
N.C. Coalition Against Domestic Violence (statewide)
N.C. Coastal Land Trust, Wilmington
N.C. Community Foundation (statewide)
N.C. Council for Women (statewide)
N.C. District Council Assemblies of God, Inc., Selma
N.C. Environmental Defense Fund (statewide)
N.C. Equity (statewide)
N.C. Fair Share, Raleigh (7 counties)
N.C. Foundation for Public School Children (statewide)
N.C. Institute of Minority Economic Development (statewide)
N.C. Justice Center (statewide)
N.C. Literacy Council (statewide)
N.C. Low Income Housing Coalition (statewide)
N.C. Occupational Safety and Health Project, Durham
N.C. Partnership for Children (statewide)
N.C. Preservation Consortium (statewide)
N.C. REAL Enterprises (58 counties)
N.C. Rural Economic Development Center (statewide)
N.C. Student Rural Health Coalition (statewide)
N.C. Theatre Conference (statewide)
Nazareth Children's Home, Rockwell
New Beginnings, Raleigh
Northeastern Comm. Dev. Corp., Camden
Oasis of Love Homes, Inc., Jamestown
Open Door Ministries of High Point, Inc., High Point
Orange Community Housing Corp., Carrboro
Orange County Rape Crisis Center, Chapel Hill
Orange Enterprises Inc., Hillsborough
Pacolet Area Conservancy, Columbus
Palmer Drug Abuse Program of Robeson County, Lumberton
Pamlico-Tar River Foundation, Washington
Partnerships in Assistive Technology (statewide)
Patterson School, Lenoir
People's Alliance, Durham
Placing Animals Within Society, Bryson City
Pioneer Girl Scout Council, Gastonia
Placing Animals Within Society, Bryson City
Prevent Blindness North Carolina, Raleigh
Prevent Child Abuse N.C. (statewide)
Public School Forum of N.C. (statewide)
Randolph County Family Crisis Center, Asheboro
REACH of Haywood County, Waynesville
Redirections of Rockingham/Caswell Counties, Reidsville
Regal Ventures, Inc., Kings Mountain
Rocky Mount Cities In Schools, Rocky Mount
Ronald McDonald House of Durham, Inc., Durham
Ronald McDonald House of Winston-Salem, Inc., Winston-Salem
Rural Advancement Foundation International, Pittsboro
Project Avery Literacy, Newland
SAFEchild, Raleigh
Scarborough Nursery, Durham
Scenic North Carolina, Inc. (statewide)
SciWorks Science Center and Environmental Park, Winston-Salem
Second Chance Mission of Hope, Inc., Jacksonville
Senior Services, Inc., Winston-Salem
The Shepherd's Center of Greater Winston-Salem, Winston-Salem
Southeastern Community College Foundation, Whiteville

Groups Urging You to Support Incentives to Increase Charitable Giving (Continued)

Southern Appalachian Highlands Conservancy, Asheville
Southern Highland Craft Guild, Asheville
St. Joseph's Historic Foundation, Inc., Durham
St. Mark's Incorporated, Charlotte
Summit House, Charlotte, Greensboro, Raleigh
Surry Medical Ministries Foundation, Inc., Mount Airy
Swiss Bear Downtown Development, New Bern
Transylvania County Historical Society, Brevard
Transylvania Literacy Council, Brevard
Triangle Community Foundation, Research Triangle Park (Chatham, Durham, Orange, Wake Counties)
Tri-County Industries, Inc., Rocky Mount
United Christian Ministries of Jackson County, Sylva
United Methodist Agency for the Retarded, Charlotte (Western North Carolina)
United Way of Asheville & Buncombe County, Asheville
United Way of Central Carolinas, Charlotte
United Way of Cumberland County, Fayetteville
United Way of Davidson County, Lexington
United Way of Forsyth County, Winston-Salem
United Way of Haywood County, Waynesville
United Way of Hoke County, Raeford
United Way of Iredell County, Statesville
United Way of Lincoln County, Lincolnton
United Way of Moore County, Southern Pines
United Way of North Carolina (represents local United Ways in 87 counties)
United Way of Pitt County, Greenville
United Way of Randolph County, Inc., Asheboro
United Way of Rutherford County, Spindale
United Way of Stanly County, Inc., Albermarle
United Way of Vance County, Henderson
United Way of Wayne County, Goldsboro
United Way of Wilkes County, N. Wilkesboro
UPLIFT, Inc., Greensboro
Upper Yadkin Valley Habitat for Humanity, Elkin
The Valle Crucis Conference Center, Valle Crucis
Very Special Arts North Carolina (statewide)
Wake County Literacy Council, Raleigh
Wake Interfaith Hospitality Network, Raleigh
Watauga United Way, Boone
Webster Enterprises, Sylva
We Care Outreach, Fayetteville
Western North Carolina Alliance, Asheville
Wing Haven Foundation, Charlotte
Winston-Salem Downtown Church Committee, Winston-Salem
The Winston-Salem Foundation, Winston-Salem
Womenfolk Unlimited, Hamlet
Women's Center of Wake County, Raleigh
Women's Resource Center, Hickory
World Care Organization (Ministry), Dallas
Yadkin County United Way, Yadkinville
YMCA of Greater Charlotte, Charlotte
YMCA of Greater Winston-Salem, Winston-Salem
YMCA of Wake County, Raleigh
YWCA of Greensboro, Greensboro
YWCA of High Point, High Point
YWCA of Wilmington, Wilmington
The Yadkin/Pee Dee Lakes Project, Badin
Yellow Mountain Enterprises, Newland

Wilson

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1092

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1092-ALA-001

Page 1 of __

Date_____,1998

Comm. Sub. [yes]
Amends Title [yes]
PCS 1933

1 moves to amend the bill on page 1, line 6,
2 by deleting the phrase:
3 "FOR CERTAIN TAXPAYERS";
4 and on page 1, line 12 by removing the quotation mark at the end of
5 the line;
6 and on page 8, lines 1-18, by rewriting the lines to read:
7 "Section 8. G.S. 105-134.6(c)(4a) is repealed."
8

SIGNED _____ (Connie Wilson)
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Mc Mahan

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1092

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1092-ARB-2 Page 1 of __

Date_____,1998

Comm. Sub. [PROPOSED]
Amends Title [YES]
S1092-PCS1933

Representative McMahan

moves to amend the bill on page 1, line 6, by deleting the word "AND";

and on page 1, line 9, by deleting the word "LOSS." and substituting the phrase "LOSS, TO EXPAND THE STATE CORPORATE INCOME TAX DEDUCTION FOR CHARITABLE CONTRIBUTIONS, AND TO INCREASE THE INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS BY NONITEMIZERS.";

and on page 8, lines 18 and 19, by inserting the following new sections between those lines:

"INCREASE CHARITABLE GIVING."

Section 9. G. S. 105-130.9 reads as rewritten:

"**§ 105-130.9. Contributions.**

~~Contributions shall be allowed as a deduction to the extent and in the manner provided as follows:~~ (a) North Carolina Corporations. -- Corporations that do not allocate a part of their total net income outside this State may deduct the following contributions to the extent allowed in this section:

(1) Most Charitable Contributions. -- Charitable contributions as defined in section 170(c) of the Code, ~~exclusive of~~ other than contributions allowed in subdivision (2) of this section, ~~shall be allowed as a deduction to the extent provided herein. The amount allowed as a deduction hereunder shall be limited to an amount not in excess of five percent (5%)~~ up to a maximum deduction of ten percent (10%) of the corporation's net income as computed without the benefit of this subdivision or subdivision (2) of this

section. ~~Provided, that a carryover of contributions shall not be allowed and that contributions made to North Carolina donees by corporations allocating a part of their total net income outside this State shall not be allowed under this subdivision, but shall be allowed under subdivision (3) of this section.~~

(2) Contributions to North Carolina Governments and Educational Institutions. -- Contributions ~~by any corporation~~ to the following entities: the State of North Carolina, any of its institutions, instrumentalities, or agencies, any county of this State, its institutions, instrumentalities, or agencies, any municipality of this State, its institutions, instrumentalities, or agencies, and ~~contributions or gifts by any corporation to~~ any educational institutions located within North Carolina, no part of the net earnings of which inures to the benefit of any private stockholders or dividend. For the purpose of this subdivision, the ~~words~~ term 'educational institution' ~~shall mean~~ includes only an educational institution ~~which~~ that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where the educational activities are carried on. The ~~words 'educational institution' shall be deemed to include all of such~~ term includes all of the institution's departments, ~~schools~~ schools, and colleges, a group of ~~'educational institutions'~~ educational institutions, and an organization ~~(corporation, trust, foundation, association or other entity)~~ organized and operated exclusively to receive, hold, ~~invest~~ invest, and administer property and to make expenditures to or for the sole benefit of an ~~'educational institution' or group of 'educational institutions.'~~ educational institution.

~~(3)~~

(b) Interstate Corporations. -- Corporations allocating a part of their total net income outside North Carolina under ~~the provisions of~~ G.S. 105-130.4 ~~shall~~ may deduct from total income allocable to

North Carolina contributions made to North Carolina donees qualified under ~~subdivisions (1) and (2) of this section~~ subdivision (1) or (2) of subsection (a) of this section or made through North Carolina offices or branches of other donees qualified under ~~the above-mentioned~~ those ~~subdivisions of this section; provided, such~~ subdivisions. The deduction for contributions made to North Carolina donees qualified under subdivision (1) of this section ~~shall be limited in amount to five percent (5%)~~ may not exceed ten percent (10%) of the total income allocated to North Carolina as computed without the benefit of this ~~deduction for contributions.~~ subsection.

Corporations allocating a part of their total net income outside North Carolina may deduct from net income before allocation under G.S. 105-130.4 contributions made to other donees qualified under subdivision (1) of subsection (a) of this section. This deduction may not exceed ten percent (10%) of the corporation's net income before allocation under G.S. 105-130.4, as computed without the benefit of this subsection.

(c) Carryforward. -- If a corporation's deductions allowed under subdivision (a)(1) or subsection (b) of this section exceed the applicable percentage limitation, the corporation may carry the excess forward for the succeeding five years to the extent the amounts carried forward under this subsection plus the amounts deductible under subdivision (a)(1) or subsection (b) of this section for each taxable year do not exceed the percentage limitation for that taxable year. Amounts deductible under subdivision (a)(1) or subsection (b) of this section for the current taxable year shall be taken into account before amounts carried forward under this subsection.

~~(4)~~ ~~The~~

(d) Double Benefit Disallowed. -- The amount of a contribution for which the taxpayer claimed a tax credit pursuant to G.S. 105-130.34 shall not be eligible for a deduction under this section. The amount of the credit claimed with respect to the contribution is not, however, required to be added to income under G.S. 105-130.5(a)(10)."

Section 10. G.S. 105-130.5(b)(5) reads as rewritten:

"(5) Contributions or gifts made by any corporation ~~within the income year~~ to the extent provided under G.S. 105-130.9."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1092

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1092-ARB-2 Page 4 of __

Section 11. G.S. 105-151.26 reads as rewritten:
"**§ 105-151.26. Credit for charitable contributions by nonitemizers.**
A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Division an amount equal to ~~two and three-fourths percent (2.75%)~~ seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.
No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.";

and on page 8, line 20, by deleting "Section 9." and substituting "Section 12.";

and on page 8, line 25, by deleting "Section 10." and substituting "Section 13.";

and on page 8, line 29, by deleting "Section 8 of this act is" and substituting "Sections 8 through 11 of this act are".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

Not voted on

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1092 - PCS1933 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE Proposed

(Rep.) Sen.) Capps

moves to amend the bill on page 1, line 6

(✓) WHICH CHANGES THE TITLE

by deleting the word "AND";

And on page 1, line 9, by deleting "LOSS." and substituting "LOSS, AND TO REPEAL THE STATE GIFT TAX.";

and on page 8, lines 18 and 19, by inserting the following between those lines:

"REPEAL GIFT TAX.

Section 8.1. Article 6 of Chapter 105 of the General Statutes is repealed.";

and on page 8, line 30, by inserting the following before the word "The": "Section 8.1 of this Act becomes effective January 1, 1999, and applies to gifts made on or after that date.".

SIGNED J. Russell Capps

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

House Finance — May 26, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Melissa Haton	NC Phys Therapy Assoc
Sherry Honey	NC Cente for Nonprofits
Amy Forzl	NC Physical Therapy Assoc.
Mary Anne Hinshaw	Health Ecology
Nancy Bonecutt	DOR
[illegible]	NC HBX
[illegible]	Gov. Office
Kara Lofton	United Way
Veronica Vela	HealthEcology®
Keith Bouchard	HealthEcology®
Alisa C. Lowery	Tax payer
Alicia Gregory	Rep Nichols Intern

VISITOR REGISTRATION SHEET

House Finance — May 26, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Charles Hawks	NC DOR
Anna Pope	NC DOR
Patti Seawell	"
Jim Lofton	NCAFL
Tolbert Pulley	M/T
Mark Whitehurst	Poyner & Spruill
Jim Blackburn	NC Association of County Commissioners
LYMAN COOPER	C.S.X. CORP.
Andy Romanet	N.C. League of Municipalities
Leslie Bwacqua	NCCBT
Suzanne Jones	Rep. Esposito's intern
Beryl L. Wade	Gov's Off

VISITOR REGISTRATION SHEET

Horse Finance
Name of Committee

May 26, 1998
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NC State DOT
Butch Gunnells	NC SODA
Elizabeth Crutchfield	Health Ecology
Lula Stenberg	Health Ecology
Morris Folsom	Sec DOT
Becky Stuart	PPAB

MINUTES

HOUSE COMMITTEE ON FINANCE

THURSDAY, MAY 21, 1998

8:30 A.M. ROOM 544-LOB

The House Committee on Finance met on Thursday, May 21, 1998, at 8:30 a.m. in Room 544-LOB. A silent roll was taken, (roll list denotes members present).

Rep. Gray called the meeting to order.

HB-1077 MASSAGE & BODYWORK THERAPIES

Rep. Clary explained the bill. Rep. Wilson moved for approval of the Proposed Committee Substitute for discussion. So moved.

Rep. Clary asked for permission for Ms. Terrie Mendenhall, Triangle Trigger-Point Therapy, representative for the massage therapist, to address members and speak on the bill. She was recognized and urged support.

Rep. Womble had a series of questions which was answered by Rep. Clary and Ms. Mendenhall.

Mr. Jim Blackburn, County Commissioner Association addressed Rep. Womble questions/comments and spoke in favor of the bill. Mr. Ellis Hankins, League of Municipalities, also agreed with Mr. Blackburn's comments.

Rep. Womble had another inquiry about trainers and therapist and Mr. Rick, Rosen, Body Therapy Instructor, Siler City, NC, was asked to speak to members for clarification. Rep. Jarrell spoke on the bill and urged support. Rep. Nichols spoke and inquired about the licensing. He also wanted to know who had been harmed or had there been a mal-practice suit. Mr. Rosen addressed his inquiries. Rep. Nichols then asked where in NC this is taught and if by community colleges. Rep. Clary advised there were 11 schools in NC and they are accredited through community colleges. Rep. Nichols continued and asked a question of Mr. William Potter, NC Physical Therapy Association. Mr. Potter was recognized.

Rep. Gray announced this would be removed from the agenda due to the amount of discussion it was generating and would be continued after session so

that we could move on to the next bill. Some members expressed concerns about returning after session due to traveling for the afternoon.

SB-1092 ELIMINATE STATE FOOD TAX

Sen. Hoyle explained the bill. Rep. Gray announced the Proposed Committee Substitute was properly before the committee for discussion. Rep. Gray called for a recess until more copies could be provided.

After sufficient copies had been distributed, Rep. Gray called back to order and announced that we would adjourn until Tuesday, May 26, 1998 at 8:30 a.m. for discussion of the same two bills.

Meeting adjourned at 9:24 a.m.

Rep. Lyons Gray, Chairman

Cindy Brooks, Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

THURSDAY, MAY 21, 1998

8:30 A.M. ROOM 544-LOB

CALL TO ORDER:

REP. GRAY, CHAIRMAN

BILLS FOR DISCUSSION:

HB-1077 - MASSAGE AND BODYWORK THERAPIES
REP. CLARY

SB-1092 - ELIMINATE STATE FOOD TAX
SEN. HOYLE

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1077
Proposed Committee Substitute H1077-PCS1508

Short Title: Massage and Bodywork Therapies. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT REGULATING THE PRACTICE OF MASSAGE AND BODYWORK THERAPY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 36.

"Massage and Bodywork Therapy Practice.

"**§ 90-620. Short title.**

This Article shall be known as the North Carolina Massage and Bodywork Therapy Practice Act.

"**§ 90-621. Declaration of purpose.**

The General Assembly recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapy is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.

"**§ 90-622. Definitions.**

The following definitions apply in this Article:

(1) Board. -- The North Carolina Board of Massage and Bodywork Therapy.

(2) Board-approved school. -- Any massage and bodywork therapy school or training program in this State or another state that has met the criteria established by the Board.

(3) Massage and bodywork therapy. -- Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:

a. Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.

b. Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.

c. The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.

(4) Massage and bodywork therapist. -- A person licensed under this Article.

(5) Practice of massage and bodywork therapy. -- The application of massage and bodywork therapy to any person for a fee or other consideration. 'Practice of massage and bodywork therapy' does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"**§ 90-623. License required.**

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including 'massage therapist', 'bodywork therapist', 'masseur', 'masseuse', 'massagist', 'somatic practitioner', 'body therapist', 'structural integrator', or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term 'massage therapist' or 'bodywork therapist' or any other term that implies a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title 'Licensed Massage and Bodywork Therapist'. No other person shall assume this title or use an abbreviation or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

"**§ 90-624. Exemptions.**

Nothing in this Article shall be construed to prohibit or affect:

(1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.

(2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(3) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under this Article.

(4) Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.

(5) A person giving massage and bodywork therapy to members of that person's immediate family.

(6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

(7) The practice of techniques that are specifically intended to affect the human energy field.

"**§ 90-625. North Carolina Board of Massage and Bodywork Therapy.**

(a) The North Carolina Board of Massage and Bodywork Therapy is created. The Board shall consist of seven members who are residents of this State and are as follows:

(1) Five members shall be massage and bodywork therapists who have been licensed under this Article and have been in the practice of massage and bodywork therapy for at least five of the last seven years prior to their serving on the Board. The appointments shall be made from lists provided by those covered in this Article. Consideration shall be given to geographical distribution, practice setting, clinical specialty, and other factors that will promote diversity of the profession on the Board. One of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and three shall be appointed by the Governor.

(2) The remaining two members shall be members of the general public who shall not be licensed under this Article or the spouse of a person who is so licensed, or have any financial interest, direct or

indirect, in the profession regulated. One of these members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member of the Board shall serve for a term of three years, ending on June 30 of the last year of the term. A member shall not be appointed to serve more than two consecutive terms.

(d) The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business but no less than twice a year. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

"§ 90-626. Powers and duties.

The Board shall have the following powers and duties:

(1) Represent the diversity within the profession at all times when making decisions and stay current and informed regarding the various branches of massage and bodywork therapy practice.

(2) Evaluate the qualifications of applicants for licensure under this Article.

(3) Issue, renew, deny, suspend, or revoke licenses under this Article.

(4) Reprimand or otherwise discipline licensees under this Article.

(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.

(7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.

(8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.

(9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the

Board, including rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapy establishments. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.

(10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.

(11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.

(12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.

(13) Provide a system for grievances to be presented and resolved.

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective.

"§ 90-627. Custody and use of funds.

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article.

"§ 90-628. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the State treasury.

(b) The schedule of fees may include the following and may be adjusted as the Board deems necessary:

(1)	Application for examination	$150.00
(2)	License fee	100.00
(3)	License renewal	75.00
(4)	Late renewal penalty	50.00
(5)	License by reciprocity	50.00
(6)	Duplicate license	15.00
(7)	Provisional license	100.00.

"§ 90-629. Requirements for licensure.

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

(1) Has obtained a high school diploma or equivalent.

(2) Is 18 years of age or older.

(3) Is of good moral character as determined by the Board.
(4) Has successfully completed a course of study consisting of a minimum of 500 classroom hours of supervised instruction at a Board-approved school.
(5) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board.

"**§ 90-630. Reciprocity.**

(a) An applicant shall be eligible for licensure if (i) the applicant has been licensed in another state within five years of the application to the Board and the other state has standards for massage and bodywork therapists that are substantially equivalent to those in this State; (ii) the applicant holds a current certification from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets NCCA standards; or (iii) the applicant meets special requirements established by the Board.

(b) Upon receipt of an application for reciprocity, the Board shall contact each jurisdiction that has previously certified or licensed the applicant to determine whether there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

(c) Reciprocity may not be granted if the state in which the applicant is licensed has not granted a similar reciprocity to licensees in this State.

"**§ 90-631. Massage and bodywork therapy schools.**

The Board shall establish rules for the approval of massage and bodywork therapy schools. These rules shall include:

(1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapy.
(2) Standards for faculty and learning resources.
(3) Requirements for reporting changes in instructional staff and curriculum.
(4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapy may make application for approval to the Board. The Board shall grant approval to schools, whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved schools.

"**§ 90-632. License renewal and continuing education.**

The license to practice under this Article shall be renewed every two years. When renewing a license, each licensee shall submit to the Board evidence of the successful

completion of at least 25 hours of study, as approved by the Board, during the immediately preceding two years, in the practice of massage and bodywork therapy.

"**§ 90-633. Disciplinary action.**

The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) The use of drugs or intoxicating liquors to an extent that affects professional competency.

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.

(4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.

(5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules.

(7) The commission of an act of malpractice, gross negligence, or incompetency.

(8) Practice as a licensee under this Article without a valid certificate or renewal.

(9) Engaging in conduct that could result in harm or injury to the public.

(10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapy without successfully completing training approved by the Board in that specialty.

"**§ 90-634. Enforcement; injunctive relief.**

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

(1) Practice of massage and bodywork therapy.

(2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.

(3) Use any title descriptive of any branch of massage and bodywork therapy, as provided in G.S. 90-623, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person has violated or

is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action.

"§ 90-635. Third-party reimbursement.

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article.

"§ 90-636. Regulation by county or municipality.

Nothing in this Article shall be construed to prohibit a county or municipality from regulating persons covered by this Article, however, a county or municipality may not impose regulations that are more stringent than those imposed by this Article or that are inconsistent with this Article."

Section 2. Notwithstanding the provisions of G.S. 90-625(a), as enacted in Section 1 of this act, the terms of initial appointments to the North Carolina Board of Massage and Bodywork Therapy shall be as follows:

(1) The terms of the three members appointed by the Governor pursuant to G.S. 90-625(a)(1), as enacted in Section 1 of this act, shall expire June 30, 2001.

(2) The terms of all other members shall expire June 30, 2000.

Section 3. The five initial appointments to the North Carolina Board of Massage and Bodywork Therapy pursuant to G.S. 90-625(a)(1), as enacted in Section 1 of this act, shall satisfy all of the provisions of G.S. 90-625(a)(1), except the licensure requirement, and shall satisfy the provisions of G.S. 90-629(1) through (4), as enacted in Section 1 of this act, except the 500 classroom hours of supervised instruction does not have to be in a curriculum that meets the basic guidelines established by the North Carolina Board of Massage and Bodywork Therapy.

Section 4. If an applicant does not meet the educational or examinations requirements in G.S. 90-629(4) and (5), as enacted in Section 1 of this act, then for a maximum period of two years after the effective date of this act, the Board may permanently waive those requirements and grant a provisional license to the applicant. At the end of two years after the granting of the provisional license, the applicant shall submit evidence to the Board of his or her compliance with the continuing education requirements in G.S. 90-632, as enacted in Section 1 of this act. Upon receipt of proper documentation, the applicant shall be issued a license to practice massage and bodywork therapy. An applicant for a provisional license shall meet the requirements set forth in G.S. 90-629 (1) through (3), as enacted in Section 1 of this act, and shall submit all of the following for consideration by the Board:

(1) Documentation that the applicant has been engaged in the professional practice of massage and bodywork therapy for a minimum of four years prior to the application to the Board.

(2) Documentation of a minimum of 500 hours of professional practice in the field of massage and bodywork therapy during the four years prior to the application to the Board.

(3) Verification that the applicant has been practicing in the State at the time the application is submitted.

(4) Three letters of reference from sources approved by the Board attesting to the sound moral character, professional qualifications, and competence of the applicant.

Section 5. This act becomes effective October 1, 1998, and applies to offenses occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1077

Short Title: Massage and Bodywork Therapies. (Public)

Sponsors: Representatives Clary; Bonner, Capps, Culp, Dedmon, Earle, Gulley, McAllister, Moore, Morris, Reynolds, Saunders, Sexton, Sherrill, Shubert, Starnes, Thompson, Watson, and Weatherly.

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

April 21, 1997

A BILL TO BE ENTITLED

AN ACT REGULATING THE PRACTICE OF MASSAGE AND BODYWORK THERAPIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 33.

"Massage and Bodywork Therapies Practice.

"**§ 90-520. Short title.**

This Article shall be known as the North Carolina Massage and Bodywork Therapies Practice Act.

"**§ 90-521. Declaration of purpose.**

The General Assembly recognizes that the improper practice of massage and bodywork therapies is potentially harmful to the public. Mandatory licensure of those engaged in the practice of massage and bodywork therapies is necessary to ensure minimum standards of competency and to protect the public health, safety, and welfare.

"**§ 90-522. Definitions.**

The following definitions apply in this Article:

(1) Board. -- The North Carolina Board of Massage and Bodywork Therapies.

(2) Board approved school. -- Any massage and bodywork therapies school or training program in this State or another state that has met the criteria established by the Board.

(3) Massage and bodywork therapies. -- Systems of activities applied to the soft tissues of the body for therapeutic, educational, or relaxation purposes. The application may include:

a. Manual techniques.

b. Passive or active stretching within the normal anatomical range of movement.

c. Complementary methods, including the external application of water, heat, cold, lubricants, or other topical preparations.

d. Mechanical devices that mimic or enhance the actions possible by the hands.

(4) Massage and bodywork therapist. -- A person licensed under this Article.

(5) Practice of massage and bodywork therapies. -- The application of massage and bodywork therapies to any person for a fee or other consideration. 'Practice of massage and bodywork therapies' does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

"§ 90-523. License required.

(a) A person shall not practice or hold out himself or herself to others as a massage and bodywork therapist without first applying for and receiving from the Board a license to engage in that practice.

(b) A person holds out himself or herself to others as a massage and bodywork therapist when the person adopts or uses any title or description including 'massage therapist', 'bodywork therapist', 'masseur', 'masseuse', 'massagist', 'somatic practitioner', 'body therapist', 'structural integrator', or any derivation of those terms that implies this practice.

(c) It shall be unlawful to advertise using the term 'massage therapist' or 'bodywork therapist' or any other term that implies a soft tissue technique or method in any public or private publication or communication by a person not licensed under this Article as a massage and bodywork therapist. Any person who holds a license to practice as a massage and bodywork therapist in this State may use the title 'Licensed Massage Therapist' or 'Licensed Bodywork Therapist'. No other person shall assume these titles or use these abbreviations or any other words, letters, signs, or figures to indicate that the person using the title is a licensed massage and bodywork therapist. An establishment employing or contracting with persons licensed under this Article may advertise on behalf of those persons.

"§ 90-524. Exemptions.

Nothing in this Article shall be construed to prohibit or affect:

(1) The practice of a profession by persons who are licensed, certified, or registered under other laws of this State and who are performing services within their authorized scope of practice.

(2) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(3) The practice of massage and bodywork therapy by persons duly licensed in another state, territory, or the District of Columbia when incidentally called into this State for consultation with a person licensed under this Article.

(4) Students enrolled in a Board approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article.

(5) A person giving massage and bodywork therapy to members of that person's immediate family.

(6) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

"**§ 90-525. North Carolina Board of Massage and Bodywork Therapies.**

(a) The North Carolina Board of Massage and Bodywork Therapies is created. The Board shall consist of seven members who are residents of this State and are as follows:

(1) Five members shall be massage and bodywork therapists with at least five years of experience in massage and bodywork practice. The appointments shall be made from lists provided by those covered in this Article. Consideration shall be given to geographical distribution, practice setting, clinical specialty, and other factors that will promote diversity of the profession on the Board. One of the five members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and three shall be appointed by the Governor.

(2) The remaining two members shall be members of the general public who shall not be licensed under this Article or the spouse of a person who is so licensed, or have any financial interest, direct or indirect, in the profession regulated. One of these members shall be appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate.

(b) Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

(c) Each member of the Board shall serve for a term of three years, ending on June 30 of the last year of the term. A member shall not be appointed to serve more than two consecutive terms.

(d) The Board shall elect annually a chair and other officers as it deems necessary. The Board shall meet as often as necessary for the conduct of business but no less than twice a year. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) Members may be removed by the official who appointed the member for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

"**§ 90-526. Powers and duties.**

The Board shall have the following powers and duties:

(1) The Board shall at all times represent the diversity within the profession and shall stay informed regarding the various branches of massage and bodywork therapies.

(2) Evaluate the qualifications of applicants for licensure under this Article.

(3) Issue, renew, deny, suspend, or revoke licenses under this Article.

(4) Reprimand or otherwise discipline licensees under this Article.

(5) Conduct investigations to determine whether violations of this Article exist or constitute grounds for disciplinary action against licensees under this Article.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a contested case, as defined in G.S. 150B-2(2), arises under this Article.

(7) Employ professional, clerical, or other special personnel necessary to carry out the provisions of this Article and purchase or rent necessary office space, equipment, and supplies.

(8) Establish reasonable fees for applications for examination, certificates of licensure and renewal, and other services provided by the Board.

(9) Adopt, amend, or repeal any rules necessary to carry out the purposes of this Article and the duties and responsibilities of the Board, including rules related to the approval of massage and bodywork therapies schools, continuing education providers, examinations for licensure, the practice of advanced techniques or specialties, and massage and bodywork therapies establishments.

(10) Appoint from its own membership one or more members to act as representatives of the Board at any meeting where such representation is deemed desirable.

(11) Maintain a record of all proceedings and make available to certificate holders and other concerned parties an annual report of the Board.

(12) Adopt a seal containing the name of the Board for use on all certificates and official reports issued by it.

(13) Approve or establish requirements for bodywork therapies schools, instructors, education curriculum, examinations for licensure, the practice of advanced techniques or specialties, and bodywork therapies establishments.

(14) Provide a system for grievances to be presented and resolved.

The powers and duties set out in this section are granted for the purpose of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective.

"§ 90-527. Custody and use of funds.

All fees and other moneys collected and received by the Board shall be used for the purposes of implementing this Article.

"§ 90-528. Expenses and fees.

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the State treasury.

(b) The schedule of fees may include the following and may be adjusted as the Board deems necessary:

(1)	Application for examination	$150.00
(2)	License fee	100.00
(3)	License renewal	75.00
(4)	Late renewal penalty	50.00
(5)	License by reciprocity	50.00
(6)	Duplicate license	15.00
(7)	Provisional license	100.00.

"§ 90-529. Requirements for licensure.

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

(1) Has obtained a high school diploma or equivalent.

(2) Is 18 years of age or older.

(3) Is of good moral character as determined by the Board.

(4) Has successfully completed a course of study consisting of a minimum of 500 classroom hours of supervised instruction at a Board approved school.

(5) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission of Certifying Agencies (NCCA) and is in good standing with such agency or has successfully passed an examination administered or approved by the Board.

"**§ 90-530. Reciprocity.**

(a) An applicant shall be eligible for licensure if the applicant has been licensed in another state that has standards for massage and bodywork therapists that are substantially equivalent to those in this State or the applicant holds a valid certificate from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets NCCA standards.

(b) Upon receipt of an application for reciprocity, the Board shall contact each jurisdiction that has previously certified or licensed the applicant to determine whether there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

(c) Reciprocity may not be granted if the state in which the applicant is licensed has not granted a similar reciprocity to licensees in this State.

"**§ 90-531. Massage and bodywork therapies schools.**

The Board shall establish rules for the approval of massage and bodywork therapies schools. These rules shall include:

(1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapies.

(2) Standards for faculty and learning resources.

(3) Requirements for reporting changes in instructional staff and curriculum.

(4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapies may make application for approval to the Board. The Board shall grant approval to schools, whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved schools.

"**§ 90-532. License renewal and continuing education.**

The license to practice under this Article shall be renewed every two years. When renewing a license, each licensee shall submit to the Board evidence of the successful completion of at least 25 hours of study, as approved by the Board, during the immediately preceding two years, in the practice of massage and bodywork therapies.

"**§ 90-533. Disciplinary action.**

The Board may deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for any of the following:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) The use of drugs or intoxicating liquors to an extent that affects professional competency.

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law until proof of rehabilitation can be established.

(4) Conviction of a felony or other public offense involving moral turpitude until proof of rehabilitation can be established.

(5) An adjudication of insanity or incompetency until proof of recovery from the condition can be established.

(6) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board, or aiding, abetting, or assisting any other person in the violation of these provisions or rules.

(7) The commission of an act of malpractice, gross negligence, or incompetency.

(8) Practice as a licensee under this Article without a valid certificate or renewal.

(9) Engaging in conduct that could result in harm or injury to the public.

(10) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.

(11) Falsely holding out himself or herself as licensed or certified in any discipline of massage and bodywork therapies without successfully completing training approved by the Board in that specialty.

"**§ 90-534. Enforcement; injunctive relief.**

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

(1) Practice of massage and bodywork therapies.

(2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.

(3) Use any title descriptive of any branch of massage and bodywork therapies as provided in G.S. 90-523, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person has violated or is about to violate this Article, the court may grant an injunction or take other appropriate action.

"**§ 90-535. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursement to persons licensed under this Article."

Section 2. Notwithstanding the provisions of G.S. 90-525(a), as enacted in Section 1 of this act, the terms of initial appointments to the North Carolina Board of Massage and Bodywork Therapies shall be as follows:

(1) The terms of the three members appointed by the Governor pursuant to G.S. 90-525(a)(1), as enacted in Section 1 of this act, shall expire June 30, 2000.

(2) The terms of all other members shall expire June 30, 1999.

Section 3. The five initial appointments to the North Carolina Board of Bodywork Therapies pursuant to G.S. 90-525(a)(1), as enacted in Section 1 of this act, shall satisfy all of the provisions of G.S. 90-525(a)(1), except the licensure requirement, and shall satisfy the provisions of G.S. 90-529(1) through (4), as enacted in Section 1 of this act, except the 500 classroom hours of supervised instruction does not have to be in a curriculum that meets the basic guidelines established by the North Carolina Board of Massage and Bodywork Therapies.

Section 4. If an applicant does not meet the educational or examinations requirements in G.S. 90-529(4) and (5), as enacted in Section 1 of this act, then for a maximum period of two years after the effective date of this act, the Board may permanently waive those requirements and grant a provisional license to the applicant. At the end of two years after the granting of the provisional license, the applicant shall submit evidence to the Board of his or her compliance with the continuing education requirements in G.S. 90-532, as enacted in Section 1 of this act. Upon receipt of proper documentation, the applicant shall be issued a license to practice massage and bodywork therapies. An applicant for a provisional license shall meet the requirements set forth in G.S. 90-529 (1) through (3), as enacted in Section 1 of this act, and shall submit all of the following for consideration by the Board:

(1) Documentation that the applicant has been engaged in the professional practice of massage and bodywork therapies.

(2) Documentation of a minimum of 500 hours of professional practice in the field of massage and bodywork therapies.

(3) Verification that the applicant has been practicing in the State at the time the application is submitted.

(4) Three letters of reference from sources approved by the Board attesting to the sound moral character, professional qualifications, and competence of the applicant.

Section 5. This act becomes effective January 1, 1998, and applies to offenses occurring on or after that date.

EXPLANATION OF HOUSE BILL 1077 (PCS):
Massage and Bodywork Therapy

TO: House Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: May 20, 1998
SPONSOR: Representative Clary

The PCS for House Bill 1077 creates the "North Carolina Massage and Bodywork Therapy Practice Act." The Act's purpose is to require mandatory licensure of persons engaged in the practice of massage and bodywork therapy to ensure minimum standards of competency and to protect the public health, safety, and welfare. Under current law, a "massage business" is covered by the criminal laws for adult establishments, and is considered an adult establishment if it is "any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors." The only other statutory references to massage is language exempting simple massages and the operation of health clubs from licensure under the physical therapy act and language including massage as an adjunctive therapy under acupuncture.

The Act prohibits a person from practicing or holding himself or herself out as a massage and bodywork therapist without a license from the newly created North Carolina Board of Massage and Bodywork Therapy. The Act defines "massage and bodywork therapy" as systems of activities applied to soft tissues of the body for therapeutic, educational, or relaxation purposes. The Act also prohibits a person from adopting or using any title or description including "massage therapist", "bodywork therapist", "masseur", "masseuse", "massagist", "somatic practitioner", "body therapist", "structural integrator", or any derivation of those terms unless the person is licensed under the Act.

The practice does not include: diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

The Act does not prohibit: the practice of a profession by one licensed, certified or registered under other N.C. laws, the practice of massage and bodywork therapy by a person licensed elsewhere when that person is called into the State to teach a course or to consult with a person licensed under the Act, students enrolled in a Board approved school and completing a clinical

requirement under the supervision of a licensed person, a person giving therapy to members of the person's immediate family, and the practice of movement educators such as dance teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professions.

The requirements of licensure are:

- •high school diploma or equivalent
- •18 years or older
- •good moral character as determined by the Board
- •successful completion of a minimum of 500 classroom hours of supervised instruction at a Board approved school
- •passing an examination administered by an agency approved by the National Commission of Certifying Agencies or an examination administered or approved by the Board.

The schedule of fees for licensure may include the following and may be adjusted as the Board deems necessary:

(1)	Application for examination	$150.00
(2)	License fee	100.00
(3)	License renewal (every two years)	75.00
(4)	Late renewal penalty	50.00
(5)	License by reciprocity	50.00
(6)	Duplicate license	15.00
(7)	Provisional license	100.00

Salaries, expenses, or other Board obligations will be paid out of the above fees.

The Board consists of seven members: five to be licensed under the Article and with at least five years' experience, except that the initial five do not have to be licensed or have completed 500 hours of the required supervised instruction. The remaining two members will be from the general public.

The Act sets out powers and duties of the Board and lists reasons a Board may deny, suspend, revoke, or refuse a license. The Board may seek to enjoin anyone who violates the Act. There is no requirement for direct third-party reimbursement to licensees.

For two years after effective date of the Act, a provisional license may be granted to an applicant who does not meet educational or examination requirements for licensure. At the end of two years after the granting of the provisional license, the applicant must submit evidence of compliance with the continuing education requirements (at least 25 hours of study). The applicant will then be issued a license.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

DRAFT

BILL NUMBER: HB 1077 (Proposed Committee Substitute)

SHORT TITLE: Massage and Bodywork Therapy

SPONSOR(S): Rep. Clary

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Special Revenue Fund	**$310,000**	**$110,000**	**$293,000**	**$143,000**	**$326,000**
EXPENDITURES					
Special Revenue Fund	**$310,000**	**$110,000**	**$293,000**	**$143,000**	**$326,000**

POSITIONS: to be determined by Board

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Massage and Bodywork Therapy

EFFECTIVE DATE: The act is effective October 1, 1998.

BILL SUMMARY: The bill requires mandatory licensure of persons engaged in the practice of massage and bodywork therapy.

ASSUMPTIONS AND METHODOLOGY: Page six of the PCS, lines 24 through 39 outline the possible fees for the North Carolina Board of Massage and Bodywork Therapy. Lines 31 and 32 of page 6 state that the "schedule of fees may include the following and may be adjusted as the Board deems necessary". In order to estimate the potential income generated by HB 1077, this fiscal note assumes the fees listed in the bill will be adopted by the Board.

Rick Rosen, co-director of the Body Therapy Institute, estimates there are 2,000 massage professionals in North Carolina currently eligible for licensure under this bill. Of this number, 800 are certified by the National Certification Board for Therapeutic Massage and Bodywork.

DRAFT

The remaining 1,200 massage professionals will be given provisional licenses until they complete 25 hours of continuing education within two years. New entrants into this field will come from the 11 massage therapy schools located across the state from Asheville to Wilmington. Each school graduates an average of 40 students per year. If all graduates stay in North Carolina and apply for licensure, then 440 exams will be given each year by the Board. Assuming all pass the exam, then 440 new professionals will be licensed each year. Based on these factors, the chart below calculates the fiscal impact of the bill.

			98-99	99-00	00-01	01-02	02-03
License/Prov. License							
Certified	800	$100	$80,000				
Uncertified	1200	$100	$120,000				
New Grads	440/yr	$100	$44,000	$44,000	$44,000	$44,000	$44,000
Renewal		$75			$183,000	$33,000	$216,000
Exam	440/yr	$150	$66,000	$66,000	$66,000	$66,000	$66,000
Total			**$310,000**	**$110,000**	**$293,000**	**$143,000**	**$326,000**

TECHNICAL CONSIDERATIONS: Unlike the statutes for most state Boards and Commissions, HB 1077 PCS has no maximum fee amounts.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: May 20, 1998

INFORMATION ON HOUSE BILL 1077

HOUSE BILL 1077 - THE NORTH CAROLINA MASSAGE AND BODYWORK THERAPY PRACTICE ACT

Purpose of House Bill 1077: To create mandatory licensure for those engaged in practice of massage and bodywork therapy. House Bill 1077 sets forth requirements for professional training and examination which are consistent with national standards.

House Bill 1077 creates: The North Carolina Board of Massage and Bodywork Therapy, which is responsible for managing the licensure process.

Taxpayer Costs of House Bill 1077: NONE. All expenses and funds for activities of this Board will be paid exclusively out of licensing and examination fees, and **not** from the State Treasury.

Third-Party Reimbursement: NONE. House Bill 1077 does not require third party reimbursement. Supporting this bill is an opportunity to help protect your constituents without affecting other health care interests.

Reasons to Support House Bill 1077:

1. To establish basic educational and ethical standards for the **safe and effective practice** of massage and bodywork therapy.

2. To **protect the public** from unqualified or unethical practitioners in a rapidly growing health care filed.

3. To **establish a State Board** of Massage and Bodywork Therapy to oversee and regulate the profession in a positive way and maintain accountability.

4. To create one **uniform statewide standard** for licensure, which will relieve local governments of an undue regulatory burden.

Today there are approximately 2000 massage and bodywork therapists in North Carolina, providing a valuable health care service to many of your constituents. A new national survey by Landmark Healthcare indicates that in 29% of households, one or more family members are regularly receiving some form of therapeutic massage and bodywork. They need your support of this bill to define a legal scope of practice for this health care service.

MASSAGE LAWS & NATIONAL CERTIFICATION

Massage Laws Nationwide

Twenty-six states, plus the district of Columbia have enacted laws to regulate the practice of massage and bodywork therapy. The number of credentialed practitioners (as of January 1998) is indicated next to each state. Eight more states, including North Carolina, currently have laws under consideration.

The trend is clearly towards establishing basic educational and ethical standards for the practice of massage and bodywork therapy on the state level.

States with Regulations in Effect:

ALABAMA (325)
ARKANSAS (1,413)
CONNECTICUT (1,740)
DELAWARE (205)
DIST OF COLUMBIA *
FLORIDA (15,343)
HAWAII (2,903)
IOWA (1076)
LOUISIANA (925)
MAINE (717)
MARYLAND *
NEBRASKA (472)
NEW HAMPSHIRE (878)
NEW MEXICO (2,535)
NEW YORK (9,000)
NORTH DAKOTA (188)
OHIO (3,247)
OREGON (2,900)
RHODE ISLAND (396)
SOUTH CAROLINA (550)
TENNESSEE (872)
TEXAS (11,523)
UTAH (1,434)
VIRGINIA (780)
WASHINGTON (6,900)
WEST VIRGINIA *
WISCONSIN *

* law enacted, but State Board rules not yet complete

States with Regulatory Laws Under Consideration:

GEORGIA
MINNESOTA
MISSISSIPPI
MISSOURI
NEW JERSEY
NORTH CAROLINA
OKLAHOMA
PENNSYLVANIA

Top 10 Reasons to Get State Licensure for the Therapeutic Massage & Bodywork Profession in North Carolina

1. To establish basic educational and ethical standards for the safe and effective practice of massage and bodywork therapy
2. To define a legal scope of practice for therapeutic massage and bodywork as a health care profession
3. To gain professional recognition, dignity and respect for the work we do
4. To ensure that each therapist has the right and freedom to practice in the way they see fit
5. To make a clear break from the "adult entertainment/massage parlor" stigma
6. To establish a State Board of Massage and Bodywork Therapy to regulate our profession in a positive way and maintain accountability
7. To protect the public from unqualified or unethical practitioners
8. To create opportunities for new or expanded working relationships with other licensed health care professionals
9. To increase public awareness and utilization of this valuable health care service
10. To develop a sense of unity and common purpose among our state's diverse group of body-oriented practitioners

An Honest Look at Our Status Quo

If you believe that things are fine the way they are without state licensure, please consider the following:

At present, many massage and bodywork therapists in our state are practicing under outdated, restrictive and demeaning local ordinances. We are still subject to being fingerprinted, mug-shotted and tested for venereal disease just to get a local business license. Some practitioners are prevented from practicing out of their homes; some are forbidden from treating a member of the opposite sex; some have restricted hours of operation and some are subject to police inspection without prior warning.

At present, massage therapy is addressed in the state laws under the section dealing with Adult Entertainment. We are lumped in with the prostitution industry on both state and local levels, which places an unfair and undeserved stigma on all legitimate massage and bodywork therapists. Public awareness of our profession is tied directly to the laws which regulate us.

At present, our ability to work with the mainstream health care system is limited because we are unlicensed and unregulated at the state level. For example, the NC Board of Chiropractic Examiners has made it unethical for Chiropractors to refer their patients to massage therapists who are not employed in their office.

At present, our professional community consists of a wide spectrum of individuals, special interest groups and organizations. There is diversity, but also a sense of factionalism and isolation. Every other profession has diversity, as well, but most other professions have chosen to organize themselves under one unified banner. This is a crucial next step in our collective evolution.

And without licensure, therapists in our state are subject to having their right to practice compromised or taken away by another licensed profession, if that group believes we are encroaching on their "turf."

The magic of touch

A calming hand, a soothing massage — simple human contact is strong medicine.

The hands of massage therapist Ed Obregon work on Nortel employee Shirl Walker at Nortel's RTP site.

STAFF PHOTO BY JOHN ROTTET

The hands of Annie Turner have comforted many a baby at Duke University Medical Center's transitional care nursery. Here, Cedric Nile, 1 month old, responds to her touch.

STAFF PHOTO BY ROBERT MILLER

By Joyce Clark Hicks
STAFF WRITER

DURHAM

With curls of silken hair, butter-soft skin and tiny arms outstretched, almost everything about little Cedric Nile begs to be touched. But at 1 month old and 6 pounds, he remains hospitalized in the transitional care nursery at Duke University Medical Center. Like many of the sick or premature infants around him, the feeding tube and tangle of wires protruding from his body can make even the most loving person think twice about touching him.

But not Annie Turner. Every day, the 86-year-old Durham resident makes the trek to the hospital as a volunteer who meets a basic need: human touch.

"I'm here to rock my babies," Turner says as she strides toward the neonatal unit and hugs virtually everyone along the way. "Good morning," she says, cuddling Cedric with one hand and gently caressing his face with the other. "I love you, I love you, I love you."

Calmed by the gentle rocking motion and Turner's embrace, Cedric's stern little face soon gives way to a smile, and his fidgeting turns to yawning and stretching. "I hope the baby benefits," says Turner, who has been a touch volunteer for five years. "But I really benefit."

If researchers are right, it's probably a little of both.

For years, doctors have observed the therapeutic power of touch: a mother's nurturing embrace, a friend's pat on the back, the calming effects of massage. Now there's growing proof that touch can do much more: heal both mentally and physically.

In a groundbreaking study in 1986, researchers at the University of Miami Medical School and Duke University studied 100 premature babies who were given three 15-minute massages daily. They compared the infants' growth with the growth of 100 babies who received the same care but no massage. Researchers found that over the course of the two-week study, the massaged infants gained weight 50 percent faster than the control group.

What's more, says Dr. Saul Schanberg, a professor of biological psychology at Duke and an executive board member of the University of Miami's Touch Research Institute, they were ready to leave the hospital six days earlier at an average savings of $10,000 per child. The study has since been repeated several times, including studies looking at babies born to cocaine

See **Touch**, page 3E

TOUCH

CONTINUED FROM PAGE 1E

ad[illegible]s, with similar response. The [illegible] prompted several hospi[illegible]ound the country to set up rocking and massage programs for premature and sickly infants.

Touch is not just a benefit, says Schanberg, who oversaw Duke's involvement in the preemie study. "It's a requirement."

For the last six years, researchers at the Touch Research Institute have been exploring the effects of touch on health. To date, more than 50 TRI studies have shown touch, especially massage, to have beneficial effects on ailments from autism and chronic fatigue syndrome to bulimia, cancer, colic, diabetes, sickle cell anemia, job stress and depression. Institute studies have shown that massage helps asthmatics breathe easier, boosts the immune function in HIV-positive patients, reduces anxiety and depression in children and adults, and reduces apprehension in burn victims undergoing painful treatments.

"[illegible]re finding that it's [illegible]hing that's just critical to [illegible] says psychologist Tiffany Field, who directs research at TRI. "It's something that we need like diet and exercise to keep us healthy and alert and productive. It's a healing therapy that more people should be using."

Furthermore, Schanberg adds, it's a need we never outgrow.

Why does it work?

To Triangle caregivers like nurse clinician Jon Seskevich, the TRI's findings come as no surprise. For more than 20 years, Seskevich has studied and practiced relaxation techniques and therapeutic and healing touch. As part of his job as a stress and pain management education specialist at Duke, he regularly uses complementary talk and touch techniques on patients suffering everything from breast cancer and heart problems to cancer, cystic fibrosis, abdominal pains and organ trans[illegible]nts.

[illegible]en used as an adjunct to con[illegible]tional medicine, Seskevich believes that touch can reduce pain and help the medicine work better.

There are two theories at work. One is that massage stimulates the release of endorphins, or the body's natural pain suppressors. The other is the gate theory, which is based on the idea that pain travels on nerves up to the brain and that if you can overwhelm the nerves with other stimulation such as touch, you can block the pain message.

"Massage therapy and pain for many conditions is like a no-brainer to me," Seskevich says.

Dr. Pouru Bhiwandi, a Raleigh obstetrician and gynecologist, agrees. She regularly encourages her patients — pregnant or not — to consider massage. Not only is it good for easing stress and anxiety, she says, but it also helps pregnant women limber crucial muscles that will be used during childbirth.

"Massage and touch is an integral part of therapy," Bhiwandi says. "I certainly recommend it to a lot of my patients without hesitation."

The notion that massage can heal goes back to ancient times. Chinese medical literature referred to it as early as 3000 B.C. In 460 B.C., Hippocrates, the father of Western medicine, wrote: "The physician must be experienced in many things, but most assuredly in rubbing."

Over the years, massage has fallen in and out of favor with medical practitioners for various reasons, including superstition and fear of litigation. But in recent years, the therapeutic benefits of massage have increasingly been recognized, showing up in adjunct programs at hospitals and obstetricians' offices, in nursing homes and sports medicine clinics, and even in malls as one of the greatest stress relievers around. Late last year, a federal advisory panel strongly endorsed the ancient Chinese medical practice of acupuncture for treating certain conditions, including nausea and postoperative dental pain.

Massage's rebirth is evident in the numbers: About 25 million Americans make 60 million visits to 85,000 practitioners each year. Research at TRI has prompted workplaces and health insurance companies to examine the possibility of reimbursing for massage. Locally, Nortel in Research Triangle Park offers on-site massage to employees and reimburses employees and their family members up to $200 annually for massage.

Casual touch has benefits, too. In one famous experiment, a librarian used the same words and inflection with every patron who passed through the checkout line. But during the encounters, she brushed the hands of every other patron. When surveyed outside the library, almost every patron who was touched reported having had a pleasant experience inside. Those who weren't touched had either neutral or negative things to say. In another study, waitresses got bigger tips when they lightly touched customers on the hand or shoulder as they exchanged money.

Annie Turner is a volunteer with the Rock-A-Baby and LAP programs at Duke; behind her is Shenica McMillan with her newborn son, Jashawn.

All of which would seem to point to a need for more, not less touch, in our every day lives.

"We are just beginning to rediscover the tremendous power of touch," says TRI's Tiffany Field. "And yet, in our culture, touch often remains taboo.

"We teach hands-off from the word go," says Schanberg. "It immediately means something sexual. You just can't idly put your arm around someone. There would be huge potential repercussions that this is other than just warmth and concern. There would be harassment potential, alarms going off all over the building. And yet that is a real primitive need."

Miss Annie's touch

You don't have to tell that to Annie Turner, who spent most of her life looking after other people. When her husband of 58 years died in 1993, Turner's daughter feared for her mother's well-being. So she set out to find her mom an activity or a companion. She found both in the form of the Rock-A-Baby and LAP programs at Duke, which pair loving volunteers with newborns

ROBERT MILLER

whose parents can't always be by their sides.

For the last five years, Miss Annie — as the nurses call her — has made the 5-mile drive from her home in Durham to the hospital at least five times a week. So strong is her desire to "love my babies" that when an ice storm two years ago kept much of the nursing staff from making it into the hospital, Miss Annie reported for duty.

"It's the light of my life," she says. "It's just very exhilarating. ... I don't know what I would do if I didn't have it. As long as there are babies available, I will go and rock babies."

Emily Neal, a 71-year-old Raleigh massage therapist, also is a firm believer in the benefits of touch.

"If I don't give a massage at least once a week," she says, "I really begin to feel less of a person. It's as much a blessing to me as it is the people I work on."

Joan Vander Meer knows what Turner and Neal are talking about. As a clinical nurse specialist at Duke who specializes in geriatrics, Vander Meer uses gentle touch in "liberal doses" to calm, soothe and show concern to patients, especially those suffering from dementia or who are unable to respond to words as they once did.

"Touch is one way of communicating caring," she says. "I use touch to provide reassurance and reduce anxiety."

Yet it's not for everyone, she warns. In some instances — with the tiniest of babies or certain Alzheimer's patients — touch can do more harm than good. And in others, may simply be unwanted. "You have to be careful," she says.

But researchers are convinced that it is crucial to health and well-being.

At TRI, a study known as the "grandparent study" showed that the benefits of touch are a two-way street. In it, a group of volunteers 60 and older were given three weeks of massage and then were trained to massage babies. The babies slept better and were more alert, active and sociable when awake. Yet giving the massages proved to be more beneficial than receiving them. The seniors reported less anxiety, depression and loneliness, improved self-esteem and fewer visits to the doctor.

The smile spreading across Turner's face bears further proof.

"I love you, I love you, I love you," she says again to little Cedric. "You love me too, don't you?"

To learn more about the benefits of touch and massage, call the Touch Research Institute at (305) 243-6781 or visit its Web site at www.miami.edu/touch-research/.

Joyce Clark Hicks can be reached at 829-4636 or jclark@nando.com

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1092

Short Title: Eliminate State Food Tax. (Public)

Sponsors: Senators Hoyle, Kerr, Albertson, Ballance, Basnight, Cooper, Dalton, Dannelly, Gulley, Jenkins, Jordan, Kinnaird, Lee, Lucas, Martin of Pitt, Martin of Guilford, Miller, Odom, Perdue, Phillips, Plyler, Purcell, Rand, Reeves, Shaw of Cumberland, Soles, Warren, Weinstein, Wellons, and Winner.

Referred to: Finance.

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE STATE SALES TAX ON FOOD.

The General Assembly of North Carolina enacts:

Section 1. Effective November 1, 1998, G.S. 105-164.4(a)(5) reads as rewritten:

"(5) The rate of ~~two percent (2%)~~ one percent (1%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 2. Effective July 1, 1999, G.S. 105-164.4(a)(5) is repealed.

Section 3. Effective July 1, 1999, Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.13B. Food exempt from tax.**

The taxes imposed by this Article do not apply to food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 4. Sections 2 and 3 of this act become effective July 1, 1999, and apply to sales made on or after that date. The remainder of this act becomes effective November 1, 1998, and applies to sales made on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1092

SHORT TITLE: Eliminate Food Tax

SPONSOR(S): Senators Hoyle, et al

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($Millions)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
1% Repeal 11/1/98	**(53.9)**	**(92.2)**	**(95.0)**	**(97.9)**	**(100.8)**
1% Repeal 7/1/99	____	**(86.3)**	**(95.0)**	**(97.9)**	**(100.8)**
Total	**(53.9)**	**(178.5)**	**(190.0)**	**(195.8)**	**(201.6)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue- Sales Tax Division

EFFECTIVE DATE: The first reduction from 2% to 1% is effective November 1, 1998 and the second reduction from 1% to 0 is effective July 1, 1999.

BILL SUMMARY: The 1996 General Assembly lowered the state sales tax on food items intended for home consumption (defined as those items eligible for purchase with Food Stamps) from 4% to 3%, effective January 1, 1998. The 1997 General Assembly lowered the sales tax on food from 3% to 2% effective July 1, 1998. This proposed bill reduces the state tax from 2% to 1% on November 1, 1998 and from 1% to 0 on July 1, 1999.

ASSUMPTIONS AND METHODOLOGY: The original source of data for the estimate was a 1961 field survey conducted by field auditors of the Department of Revenue assigned to tabulate the impact of eliminating the tax exemption on food. Over the years these numbers have been updated for growth with data from the monthly "type of business establishment" reports of the Department of Revenue. Data from a special tabulation of the Department of Revenue for February and March 1997 indicates that the estimates used in previous fiscal notes are on target.

As a check on the data, estimates of food tax exemptions from other states have been reviewed. Furthermore, the estimates are consistent with nationwide food consumption data compiled by the U. S. Department of Commerce (and allocated to North Carolina by the Fiscal Research Division). Based on federal data, the estimated 3% annual growth in food tax purchases is also on target.

With a November 1 effective date, the first year revenue loss is for eight months minus a lag between the retail sale and the remittance of the tax in November. The full year cost of the 1998 reduction will be in FY 1999-00. The July 1, 1999 reduction will also be less than 12 months of revenue loss due to a lag between the retail sale and the remittance of the tax. The full year cost of that 1 cent reduction will be in FY 2000-01.

REPEAL STATE FOOD TAX

($MILLIONS)

	STATE FISCAL YEAR				
	98-99	99-00	00-01	01-02	02-03
BACKGROUND INFORMATION (1)					
CURRENT TAX YIELD (2% effective 7/1/98)	$179.1	$184.5	$190.0	$195.7	$201.6
1 CENT	$89.6	$92.2	$95.0	$97.9	$10[illegible]
REDUCE TO 1.0% (11/1/98)	($53.9)	($92.2)	($95.0)	($97.9)	($100.8)
REDUCE TO 0% (7/1/99) (2)		($86.3)	($95.0)	($97.9)	($100.8)

NOTES:
(1) Assumes annual growth of 3%
(2) The effect is less than 100% in the first year due to a lag between the retail sale and the remittance.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: May 12, 1998

EXPLANATION OF SENATE BILL 1092:
PROPOSED HOUSE COMMITTEE SUBSTITUTE
Reduce North Carolina Taxes

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: May 20, 1998
SPONSOR: Senator Hoyle

Senate Bill 1092, as passed by the Senate, reduces the State sales tax on food from 2% to 1%, effective November 1, 1998, and repeals the State sales tax on food, effective July 1, 1999. The **proposed House Committee Substitute** not only eliminates the State sales tax on food, but also reduces several other taxes:

- It repeals the remaining 2% State sales tax on food, effective October 1, 1998.
- It eliminates the State's inheritance tax, effective January 1, 1999.
- It increases the property tax homestead exemption amount and income eligibility amount to $25,000.
- It increases and indexes the individual income tax personal exemption for middle- and low-income taxpayers, effective January 1, 1999.

Repeal State Sales Tax on Food

In 1996, the General Assembly reduced the State sales tax on food from 4% to 3%, effective January 1, 1997. Last year, the General Assembly reduced the State sales tax on food from 3% to 2%, effective July 1, 1998. This bill completes the reduction by eliminating the remaining 2% State sales tax on food, effective October 1, 1998.

The sale of tangible personal property in North Carolina is subject to a 4% State sales tax unless it is specifically exempt from the tax. In 1971, 1983, and 1985, the General Assembly passed legislation allowing local governments to impose a local sales tax. The local sales tax rate is 2%. On most tangible personal property, the combined State and local sales tax rate in North Carolina is 6%. However, because of past legislation reductions, the combined State and local sales tax rate on food, effective July 1, 1998, will be 4%. This bill repeals the State's remaining 2% sales tax rate on food, but it retains the 2% local sales tax rate. Therefore, effective October 1, 1998, there will only be a local 2% sales tax on food.

The sales tax on food applies to food that may be purchased with food stamps. Federal law determines what can be purchased with food stamps and, therefore, what food is exempt from the State sales tax. Food purchased with food stamps is exempt from both the State and the local sales tax.

Eliminates the State Inheritance Tax

Section 3 of this bill repeals the State's inheritance tax and Section 4 of this bill retains a State estate tax that is equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of State estate tax is known as a "pick-up" tax because it picks up for the State the amount of federal estate tax that would otherwise be paid to the federal government. The repeal of the State's inheritance tax is effective January 1, 1999, and applies to the estates of decedents dying on or after that date.

North Carolina imposes an inheritance tax on property transferred by a decedent. The amount of tax payable depends on the relationship of the person transferring the property (the decedent) to the person receiving the property (the beneficiary). This is in contrast to federal law, which has a single rate schedule for estates.

State law classifies beneficiaries into three classes, Class A, Class B, and Class C, and sets different inheritance tax rates for each class. A Class A beneficiary is a lineal ancestor, a lineal descendant, an adopted child, a step-child, or a son-in-law or daughter-in-law whose spouse is not entitled to any of the decedent's property. A Class B beneficiary is a sibling, a descendant of a sibling, or an aunt or uncle by blood. A Class C beneficiary is anyone who is not a Class A or Class B beneficiary.

Class A beneficiaries have the lowest inheritance tax rates and a $600,000 inheritance tax exemption. Class B beneficiaries have higher rates and no exemption. Class C beneficiaries have the highest rates and no exemption. Thus, North Carolina's rate structure favors transfers to children and parents by giving those transfers the lowest rates plus an exemption and prefers transfers to other close family members over transfers to more distant relatives or to persons who are not related.

Property Tax Homestead Exemption

Sections 6, and 7 of the bill expand the property tax homestead exemption amount from $20,000 to $25,000 and increase the income eligibility amount from $15,000 to $25,000, effective July 1, 1999. Section 8 of the bill provides a State

reimbursement to local governments for their additional revenue loss as a result of this change.

The homestead exemption is a partial exemption from property taxes for the residence of a person who is either aged 65 or older or totally disabled and who has an income of less than $15,000. The income used to determine the income eligibility amount includes moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses is included, whether or not the property is in both names.

The exemption amount was last increased in 1996, when it was increased from $15,000 to $20,000 effective July 1, 1997. Before then, the exemption amount had last been increased in 1993 from $12,000 to $15,000. The income eligibility amount was last increased in 1996, when it was increased from $11,000 to $15,000 effective July 1, 1997. Before then, the income threshold had last been increased in 1987, when it was increased from $10,000 to $11,000.

Increase and Index Personal Exemption

Section 9 of the bill provides an automatic annual income tax reduction for individuals whose adjusted gross income is less than the applicable amount listed below:

Married Filing Jointly	$100,000
Head of Household	80,000
Single	60,000
Married filing separately	50,000.

The bill increases the State income tax personal exemptions for these taxpayers to the amount of the federal personal exemptions, and provides that the exemption amounts will increase automatically each year at the same rate as the federal exemptions, based on the rate of inflation. The section of the bill becomes effective beginning with the 1999 tax year. Increasing the personal exemption amounts reduces State income taxes for the individuals who adjusted gross income falls below the stated amount.

The State's personal exemption amounts were increased in 1995 in two stages, from $2,000 to $2,250 for the 1995 tax year and then to $2,500 for the 1996 tax year. The federal personal exemption amounts increase automatically each year to keep pace with inflation. The federal amount for the 1997 tax year was $2,650 and is expected to increase about $50 each year thereafter.

Increasing the State's personal exemption amounts to the federal amounts and allowing them to grow at the same pace in future years has three benefits. First, it reduces State personal income taxes for all North Carolina citizens whose income falls below the stated amount. Families with children receive a larger tax reduction because a personal exemption deduction is allowed for the taxpayer, the spouse, and each dependent. Second, it allows the State tax structure to respond automatically to inflation. If the personal exemption amounts are not indexed to inflation, taxpayer's taxes increase automatically each year because the value of their income is inflated, even if, in real terms, they make the same amount of income or less income each year. Third, it greatly simplifies tax filing for the affected taxpayers. North Carolina's individual income tax uses federal taxable income as the starting point for calculating North Carolina taxable income. As long as North Carolina's personal exemptions are not indexed to the federal amounts, every taxpayer must perform an extra calculation to adjust for the gap by adding back to federal taxable income the difference between the lower North Carolina personal exemption amount and the higher federal personal exemption amount.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1092
Proposed Committee Substitute S1092-PCS1933

Short Title: Reduce North Carolina Tax. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE STATE SALES TAX ON FOOD, TO ELIMINATE THE STATE'S INHERITANCE TAX AND RETAIN A STATE ESTATE TAX EQUAL TO THE FEDERAL STATE DEATH TAX CREDIT, TO INCREASE AND INDEX THE INDIVIDUAL INCOME TAX PERSONAL EXEMPTION AMOUNT FOR CERTAIN TAXPAYERS, AND TO INCREASE THE PROPERTY TAX HOMESTEAD EXEMPTION AMOUNT AND INCOME ELIGIBILITY AMOUNT AND REIMBURSE LOCAL GOVERNMENTS FOR THE RESULTING REVENUE LOSS.

The General Assembly of North Carolina enacts:

REPEAL STATE SALES TAX ON FOOD.

Section 1. G.S. 105-164.4(a)(5) is repealed."

Section 2. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.13B. Food exempt from tax.**

The taxes imposed by this Article do not apply to food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

ELIMINATE NORTH CAROLINA INHERITANCE TAX.

Section 3. Article 1 of Chapter 105 of the General Statutes is repealed.

Section 4. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.
"Estate Taxes.

"§ 105-32.1. Definitions.

The following definitions apply in this Article:

(1) Code. -- Defined in G.S. 105-228.90.

(2) Personal representative. -- The person appointed by the clerk of superior court under Chapter 28A of the General Statutes to administer the estate of a decedent or, if no one is appointed under that Chapter, the person required to file a federal estate tax return for the estate of the decedent.

(3) Secretary. -- Defined in G.S. 105-228.90.

"§ 105-32.2. Estate tax imposed in amount equal to federal state death tax credit.

(a) Tax. -- An estate tax is imposed on the estate of a decedent when a federal estate tax is imposed on the estate under section 2001 of the Code and any of the following apply:

(1) The decedent was a resident of this State at death.

(2) The decedent was not a resident of this State at death and owned any of the following:

a. Real property or tangible personal property that is located in this State.

b. Intangible personal property that has a tax situs in this State.

(b) Amount. -- The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the Code. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate.

"§ 105-32.3. Liability for estate tax.

(a) Primary. -- The tax imposed by this Article is payable from the assets of the estate. A person who receives property from an estate is liable for the amount of estate tax attributable to that property.

(b) Personal Representative. -- The personal representative of an estate is liable for an estate tax that is not paid within two years after it was due. This liability is

limited to the value of the assets of the estate that were under the control of the personal representative. The amount for which the personal representative is liable may be recovered from the personal representative or from the surety on any bond filed by the personal representative under Article 8 of Chapter 28A of the General Statutes.

(c) Clerk of Court. -- A clerk of court who allows a personal representative to make a final settlement of an estate without presenting one of the following is liable on the clerk's bond for any estate tax due:

(1) An affirmation by the personal representative certifying that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.

(2) A certificate issued by the Secretary stating that the tax liability of the estate has been satisfied.

"§ 105-32.4. Payment of estate tax.

(a) Due Date. -- The estate tax imposed by this Article is due when an estate tax return is due. An estate tax return is due on the date a federal estate tax return is due.

(b) Filing Return. -- An estate tax return must be filed under this Article if a federal estate tax return is required. The return must be filed by the personal representative of the estate on a form provided by the Secretary.

(c) Extension. -- An extension of time to file a federal estate tax return is an automatic extension of the time to file an estate tax return under this Article. The Secretary may, in accordance with G.S. 105-263, extend the time for paying the estate tax imposed by this Article or for filing an estate tax return.

(d) Interest and Penalties. -- The penalties in G.S. 105-236 apply to the failure to file an estate tax return or to pay an estate tax when due. Interest at the rate set in G.S. 105-241.1 accrues on estate taxes paid after the date they are due.

(e) Obtaining Amount Due. -- The personal representative of an estate may sell assets in the estate to obtain money to pay the tax imposed by this Article.

"§ 105-32.5. Making installment payments of tax due when federal estate tax is payable in installments.

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal estate tax under section 6166 of the Code. Acceleration of payments under section 6166 of the Code accelerates the payments due under this section.

"§ 105-32.6. Estate tax is a lien on real property in the estate.

The tax imposed by this Article on an estate is a lien on the real property in the estate and on the proceeds of the sale of the real property in the estate. The lien is extinguished when one of the following occurs:

(1) The personal representative certifies to the clerk of court that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.
(2) The Secretary issues a certificate stating that the tax liability of the estate has been satisfied.
(3) For specific real property, when the Secretary issues a tax waiver for that property.
(4) Ten years have elapsed since the date of the decedent's death.

"**§ 105-32.7. Generation-skipping transfer tax.**

(a) Tax. -- A tax is imposed on a generation-skipping transfer that is subject to the tax imposed by Chapter 13 of Subtitle B of the Code when any of the following apply:

(1) The original transferor is a resident of this State at the date of the original transfer.
(2) The original transferor is not a resident of this State at the date of the original transfer and the transfer includes any of the following:
a. Real or tangible personal property that is located in this State.
b. Intangible personal property that has a tax situs in this State.

(b) Amount. -- The amount of the tax imposed by this section is the maximum credit for state generation-skipping transfer taxes allowed under section 2604 of the Code. If property in the transfer is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the original transferor was a resident of this State at the date of the original transfer, the North Carolina percentage is the net value of the property transferred that does not have a tax situs in another state, divided by the net value of all property transferred. If the original transferor was not a resident of this State at the date of the original transfer, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property transferred, unless the original transferor's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the original transferor's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in a transfer is its gross value reduced by any debts secured by the property.

(c) Payment. -- The tax imposed by this section is due when a return is due. A return is due the same date as the federal return for payment of the federal generation-skipping transfer tax. The tax is payable by the person who is liable for the federal generation-skipping transfer tax.

"**§ 105-32.8. Federal determination that changes the amount of tax payable to the State.**

If the federal government corrects or otherwise determines the amount of the maximum state death tax credit allowed an estate under section 6166 of the Code, the

personal representative must, within two years after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within two years after being notified of the correction or final determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

PROPERTY TAX HOMESTEAD EXEMPTION

Section 5. G.S. 105-277.1(a) reads as rewritten:

"(a) Exclusion. -- The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The first ~~twenty thousand dollars ($20,000)~~ twenty-five thousand dollars ($25,000) in appraised value of a permanent residence owned and occupied by a qualifying owner is excluded from taxation. A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than ~~fifteen thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000).

(3) Is a North Carolina resident.

An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent."

Section 6. G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first ~~twenty thousand dollars ($20,000)~~ twenty-five thousand dollars ($25,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or

totally and permanently disabled whose income does not exceed ~~fifteen thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above ~~fifteen thousand dollars ($15,000),~~ twenty-five thousand dollars ($25,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 7. G.S. 105-277.1A reads as rewritten:

"**§ 105-277.1A. Property classified for taxation at reduced valuation; duties of tax collectors; reimbursement of localities for portion of tax lost.**

(a) On September 1, 1990, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue a list containing the name and address of each person who has qualified in that year for the exemption provided in G.S. 105-277.1. The list shall also contain for each name the total amount of property exempted, the tax rate the property is subject to, and the product obtained by multiplying those two numbers by each other. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall all be on a form prescribed by the Secretary of Revenue.

(a1) On December 1, 1997, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above eleven thousand dollars ($11,000) and the second list shall include those taxpayers whose income was eleven thousand dollars ($11,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above fifteen thousand dollars ($15,000) exempted. On both lists, the tax collector shall provide the tax rate the property is subject to and the product obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(a2) On December 1, 1999, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above fifteen thousand dollars ($15,000) and the second list shall include those taxpayers whose income was fifteen thousand dollars ($15,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above twenty thousand dollars ($20,000) exempted. On both lists, the tax collector shall provide the tax rate the property is subject to and the product obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 15.1(c)

(c) The Secretary of Revenue may, for cause, grant an extension for the submission of a list required by this section.

(d) Before May 31, 1991, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for the entire list provided pursuant to subsection (a) of this section of the product obtained by multiplying the tax exemption for each taxpayer times the applicable tax rate. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city that was entitled to receive a distribution under this subsection in 1991 the amount it was entitled to receive in 1991.

(d1) Before May 31, 1998, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for both lists provided the preceding December 1 pursuant to subsection (a1) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Before May 31, 1999, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 1998.

(d2) Before May 31, 2000, the Secretary of Revenue shall distribute to the county or city the total for both lists provided the preceding December 1 pursuant to subsection (a2) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 2000.

(e) Any funds received by any county or city pursuant to this section because the county or city was collecting taxes for another unit of government or special district shall be credited to the funds of that other unit or district in accordance with regulations issued by the Local Government Commission.

(f) In order to pay for the reimbursement under this section and the cost to the Department of Revenue of administering the reimbursement, the Secretary of Revenue shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the reimbursement and the cost of administration."

INCREASE AND INDEX PERSONAL EXEMPTIONS.

Section 8. G.S. 105-134.6(c)(4a) reads as rewritten:

"(4a) The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the ~~Code. This amount is reduced by five hundred dollars ($500.00) for each personal exemption~~ Code if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is ~~less than~~ equal to or greater than the following amounts:

Filing Status	AGI
Married, filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage."

EFFECTIVE DATES.

Section 9. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that was available under the amended or repealed statute before the effective date of its amendment or repeal.

Section 10. Sections 1 and 2 of this act become effective October 1, 1998, and apply to sales made on or after that date. Sections 3 and 4 of this act become effective January 1, 1999, and apply to the estates of decedents dying on or after that date. Sections 5 through 7 of this act are effective for taxes imposed for taxable years beginning on or after July 1, 1999. Section 8 of this act is effective for taxable years beginning on or after January 1, 1999. The remainder of this act is effective when it becomes law.

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NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1092 (Proposed House Committee Substitute)

SHORT TITLE: Reduce North Carolina Taxes

SPONSOR(S): Representative Gray

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

($million)

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
2% Food Tax Repeal	**(122.8)**	**(184.5)**	**(190.0)**	**(195.7)**	**(201.6)**
Repeal Inheritance Tax		**(52.5)**	**(79.4)**	**(85.7)**	**(92.6)**
Inc. Homestead Exemption		**(9.0)**	**(9.0)**	**(9.0)**	**(9.0)**
Inc. Personal Exemption	**(41.1)**	**(99.1)**	**(133.0)**	**(167.0)**	**(200.5)**
Total - Gen. Fund	**(163.9)**	**(345.1)**	**(411.4)**	**(457.4)**	**(503.7)**

EXPENDITURES (Possible reductions in Inheritance Tax Section to be determined by Department of Revenue)

POSITIONS: (Possible reductions in Inheritance Tax Section staff to be determined by Department of Revenue)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Counties and cities that levy a property tax

EFFECTIVE DATE: Sections 1 and 2 (sales tax on food) are effective October 1, 1998. Sections 3 and 4 (inheritance tax) become effective January 1, 1999. Sections 5 through 7 (property tax homestead exemption) are effective for taxable years beginning on or after July 1, 1999. Section 8 is effective for taxable years beginning on or after January 1, 1999.

BILL SUMMARY: The bill deals with four major tax issues: 1) eliminates the state sales tax on food, 2) eliminates the state's inheritance tax and retains a state estate tax equal to the federal state death tax credit, 3) increases and indexes the individual income tax personal exemption

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amount for certain taxpayers, and 4) increases the property tax homestead exemption amount and income eligibility amount and reimburses local governments for the resulting loss.

ASSUMPTIONS AND METHODOLOGY:

REPEAL STATE SALES TAX ON FOOD

The 1996 General Assembly lowered the state sales tax on food items intended for home consumption (defined as those items eligible for purchase with Food Stamps) from 4% to 3%, effective January 1, 1998. The 1997 General Assembly lowered the sales tax on food from 3% to 2% effective July 1, 1998. Section 1 of this proposed committee substitute repeals the remaining 2 cents of the state sales tax on food on October 1, 1998.

The original source of data for the estimate was a 1961 field survey conducted by field auditors of the Department of Revenue assigned to tabulate the impact of eliminating the tax exemption on food. Over the years these numbers have been updated for growth with data from the monthly "type of business establishment" reports of the Department of Revenue. Data from a special tabulation of the Department of Revenue for February and March 1997 indicated that the estimates used in previous fiscal notes were on target. As a check on the data, estimates of food tax exemptions from other states have been reviewed. Furthermore, the estimates are consistent with nationwide food consumption data compiled by the U. S. Department of Commerce (and allocated to North Carolina by the Fiscal Research Division). Based on federal data, the estimated 3% annual growth in food tax purchases is also on target.

The October 1, 1998 reduction will be less than 9 months of revenue loss due to a lag between the retail sale and the remittance of the tax. The full year cost of the 2 cent reduction will be in FY 1999-00.

	STATE FISCAL YEAR ($million)				
	98-99	99-00	00-01	01-02	02-03
BACKGROUND INFORMATION (1)					
CURRENT TAX YIELD (2% effective 7/1/98)	$179.1	$184.5	$190.0	$195.7	$201.6
1 CENT	$89.6	$92.2	$95.0	$97.9	$100.8
REDUCE TO 0 % (10/1/98) (2)	($122.8)	($184.5)	($190.0)	($195.7)	($201.6)

NOTES:
(1) Assumes annual growth of 3%
(2) The effect is less than 75% in the first year due to a lag between the retail sale and the remittance.

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ELIMINATE NORTH CAROLINA INHERITANCE TAX

North Carolina has both an inheritance tax and an estate tax. These taxes are borne by the beneficiary. When calculating taxes owed, a determination is made of the net value of the estate and the beneficiary's proportion of that estate. Then inheritance taxes are applied based on the beneficiary's classification. Once a state inheritance tax is determined, that number must be compared to the State Death Tax Credit (This credit amount is drawn from the federal estate tax form). If the inheritance tax is larger than the State Death Tax Credit, the beneficiary forwards the total inheritance tax to the state. If the credit is larger, a North Carolina Estate Tax is charged to bring the total tax up to the State Death Tax Credit level. As of January 1997 only 17 states, including North Carolina, still retain an inheritance tax. Sections 3 and 4 of this bill repeal the inheritance tax, with the net effect of expanding the state estate or "pick-up" tax.

The Tax Research Division of the Department of Revenue provided data based on inheritance tax returns filed and closed out in 1993. The loss associated with the 1993 data equals $42.3 million, or 45.1% of total potential inheritance tax collections, in General Fund revenue. This percentage loss was applied to current 1999-00 inheritance tax collections estimates. Future years were forcasted based on the expected growth rate in inheritance tax collections as defined in the North Carolina model (7.986%). A one time 5% adjustment was included to capture the impact of the increase in the federal unified credit and its influence on the State Death Tax Credit. No FY 1998-99 fiscal impact is shown for this item because there is a nine month lag in the payment of inheritance taxes. For example, if a benefactor dies on January 1, 1999 the inheritance tax paid by their beneficiaries would not be due until September 1, 1999, which is the next fiscal year. The estimate for FY 1999-00 has also been reduced to allow for this lag factor.

It should be noted that the federal government requires that beneficiaries pay at least the amount of the death tax credit to the state, or the federal government will retain the balance. As such, reducing a North Carolina beneficiary's total tax liability to below the State Death Tax Credit level will only result in additional funds to the federal government. The beneficiary's total tax liability will not change.

PROPERTY TAX HOMESTEAD EXEMPTION

The Homestead Exemption is a partial exemption from property taxes for the residence of a person who is either aged 65 or older, or totally disabled, and who has an income of less than $15,000. The exemption amount was last increased in 1996, when it was increased from $15,000 to $20,000 effective July 1, 1997. Before then the exemption was last increased in 1993 from $12,000 to $15,000. The income eligibility amount was last increased in 1996, when it was increased from $11,000 to $15,000. Before then the income threshold had last been increased in 1987, when it was increased from $10,000 to $11,000.

Sections 5 and 6 of the proposed bill increase the Homestead Property Tax Exemption amount for the elderly and disabled from $20,000 to $25,000 and increase the income eligibility threshold from $15,000 to $25,000. Section 7 of the proposal holds counties and cities harmless for the loss attributable to the increase proposed by the bill. As such, the full financial cost of the expansion of the Homestead Exemption will be borne by the state.

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The current annual cost of the Homestead Exemption program is approximately $27 million. That cost is divided between the state and the counties. History indicates that approximately 80% of the total cost is related to the property exemption and 20% is related to the income requirement. The proposed act increases the value of exempt property 25% and increases the income threshold 66.7%. If 80% of the cost or $21.6 million is devoted to exempt property, then a 25% increase in the exemption equals $(5.4) million. If 20% of the cost of the program is devoted to the income threshold or $5.4 million, then a 66.7% increase in the threshold equals ($3.6) million. The $9 million increase in the cost of the Homestead Exemption will be borne by the state.

INCREASE AND INDEX PERSONAL EXEMPTIONS

Section 8 of the proposed bill sets the state personal exemption rate equal to the federal personal exemption amount each year beginning in tax year 1999. The General Assembly last increased the personal exemption amount to the federal rate in 1995, but did not index it for inflation. The current state personal exemption is $2500, while the federal personal exemption rate for tax year 1999 is $2750. The rates are set each year by increasing the prior year amounts by the CPI, then round down to the nearest $50. The projected rates for tax years 1999 to 2003 are follows:

	State	1998	1999	2000	2001	2002	2003
Personal Exemption	$2,500	$2,700	$2,750	$2,850	$2,950	$3,050	$3,150
CPI		1.032	1.031	1.03	1.034	1.033	1.035

To estimate the fiscal impact of this proposal on the General Fund, these rates were entered into the Individual Income Tax computer model used by the Department of Revenue, the Fiscal Research Division, and the Office of State Budget and Management. The results from the model were checked against the 1994 Individual Income Tax Detail Report issued by the Department of Revenue. Manual calculations were consistent with the model projections.

The first year impact in FY 98-99 equals half the loss for tax year 1999 ($41.1 million) due to taxpayers adjusting their withholding tables and their estimated payments in January through June of 1999. The impact for each following year is half of one tax year plus half of the next tax year. For example, the FY 99-00 estimate of $99.1 million is half of tax year 1999 ($41.1 million) plus half of tax year 2000 ($58 million).

The personal exemption amount remains $2,000 for those with the following adjusted gross income:

Married filing jointly	$100,000
Head of Household	$80,000
Single	$60,000
Married filing separately	$50,000

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FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps & Richard Bostic
APPROVED BY:
DATE: May 20, 1998

Groups Urging You to Support Charitable Giving Tax Incentives

Now is the time. Help nonprofits help our communities.

House Bills 19 and 20

These organizations ask you to increase the deduction allowed for charitable contributions by businesses (applies mostly to small business) and increase the tax credit for charitable giving by taxpayers who do not itemize their deductions (71% of taxpayers, mostly with modest incomes).

Businesses and business associations statewide:

N.C. Citizens for Business & Industry
N.C. Retail Merchants Association
National Federation of Independent Business
Glaxo Wellcome Inc.
IBM Corporation
BellSouth
NationsBank
Nortel/Northern Telecom, Inc.

Nonprofit organizations serving communities across the state:

Adolescent Pregnancy Prevention Coalition of N.C. (statewide)
AIDS Care Service, Inc., Winston-Salem
AIDS Leadership Foothills-Area Alliance, Hickory
Agricultural Resources Center (statewide)
Albemarle Downtown Development Corporation, Albemarle
Alcohol/Drug Council of N.C. (statewide)
Alexander Children's Center, Charlotte
Allied Churches of Alamance Co. Inc., Burlington
Alzheimer's Association, Western N.C. Chapter, Asheville
Alzheimer's Association, South Piedmont Chapter, Charlotte
Alzheimer's Association, Piedmont Triad Chapter, Winston-Salem
Alzheimer's Association, Eastern N.C. Chapter, Raleigh
American Lung Association of N.C. (statewide)
American Red Cross, Triangle Area Chapter
American Red Cross, Greater Carolinas Chapter, Charlotte
Animal Rescue and Foster Program, High Point
The Arc of Orange County, Chapel Hill
The Arc of Union County, Monroe
ARTS North Carolina (statewide)
Arts Council of Carteret Co., Morehead City
Arts Council for Davidson County, Lexington
Arts Council of Moore County, Southern Pines
Arts Council of Winston-Salem and Forsyth Co., Winston-Salem
Arts & Science Center, Statesville
Artspace, Raleigh
Autism Foundation of NC (statewide)
Avery County Humane Society, Newland
Baptist Children's Homes of N.C., Inc. (statewide)
Benson Children's Home, Benson
The Bethesda Center, Winston-Salem
Better Health of Cumberland County, Fayetteville
Black Mountain Center Foundation, Black Mountain
Blue Ridge Literacy Council, Hendersonville
Boone Cooperative Preschool, Boone
Botanical Garden at Asheville, Asheville
BoysCamp, Eden
Brunswick Community College Foundation, Supply
Building Assets, Inc., Forest City
Cabarrus Memorial Hospital Foundation, Concord
Caldwell Arts Council, Lenoir
Caldwell Council on Adolescent Health, Lenoir
Calvary Ministries of the Westend Community, Inc., Durham
Cape Fear Botanical Garden, Fayetteville
Cape Fear Literacy Council, Wilmington
Cape Fear United Way, Wilmington
Capital Area Preservation, Inc., Raleigh
Capital Towers, Inc., Raleigh
Caring Services, Inc., Greensboro
Catawba County United Way, Inc., Hickory
Carolina Farm Stewardship Association (statewide)
Carolina Justice Policy Center (statewide)
Carolina Theatre of Durham, Inc., Durham
Carteret Arts Council, Morehead City
Center for Community Self-Help, Asheville, Durham, Charlotte, and Greensboro
Center of Living Home Health and Hospice, Asheboro
The CFIDS Association of America, Charlotte
Chapel Hill Training Outreach Project, Inc., Chapel Hill
Charlotte Emergency Housing, Inc., Charlotte
Charlotte-Mecklenburg Urban League, Charlotte
Chatham County Council on Aging, Pittsboro

Chatham County Group Homes, Inc., Siler City
Child Care Directions, Lumberton
Child Care Resource and Referral of Alamance, Burlington
Christian Ministry of Lincoln County, Lincolnton
Cleveland County Abuse Prevention Council, Shelby
Cleveland County Community Development Corporation, Shelby
Coastal Women's Shelter, New Bern
Colburn Gem & Mineral Museum, Asheville
Collaborative Support Services, Greensboro
Community Foundation of Western North Carolina, Asheville (18 counties)
Community General Health Partners, Inc., Thomasville
Community Living, Wilmington
Community Housing Development Corporation, Charlotte
Communities in Schools of Orange County, Hillsborough
ComServ, Inc., Morganton
Concerned Citizens of Tillery, Tillery
Consumer Credit Counseling Service of Forsyth County, Inc., Winston-Salem
Cornucopia House, Chapel Hill (3 counties)
Council for Senior Citizens, Durham
Craven County Council on Women, Inc., New Bern
Crisis Assistance Ministry, Charlotte
Crisis Control Ministry, Winston-Salem
Crohn's and Colitis Foundation-N.C. Chapter, Raleigh
Cued Speech Center, Raleigh
Developmental Disabilities Consortium (statewide)
Dare Voluntary Action Center, Kill Devil Hills
Davie County United Way, Mocksville
Domestic Violence Shelter and Services, Wilmington
Downtown Housing Improvement Corporation, Raleigh
Dulatown Outreach Center, Inc., Lenoir
Durham Affordable Housing Coalition, Durham
EASE, Inc., Durham
Easter Seal Society of N.C. (statewide)
ECO, Inc. (Energy Committed to Offenders), Charlotte
Eliada Homes, Asheville
Family Counseling Service, Durham
Family Services of Gaston, Gastonia
Family and Children's Service of Greater Greensboro, Greensboro
Family Life Council of Greater Greensboro, Inc., Greensboro
Family Services, Inc., Raleigh
Family Services, Inc., Winston-Salem
Family YMCA, Goldsboro
Fayetteville Urban Ministry, Fayetteville
Forsyth County Day School, Lewisville
Foundation for the Carolinas, Charlotte (9 counties)
Four Seasons Hospice, Hendersonville
Friends of N.C. Senior Tarheel Legislature, Inc., Mt. Airy
Friends of the WNC Nature Center, Asheville
Fund for Human Possibility, Chapel Hill
Goodwill Industries of Eastern North Carolina, Durham (40 counties)
Goodwill Industries of the Southern Piedmont, Charlotte
Greensboro Cerebral Palsy Association, Greensboro
Greensboro Historical Museum, Greensboro
Guilford Native American Association, Greensboro
The G-WIS Foundation, Cary
Habitat for Humanity of Forsyth County, Winston-Salem
Habitat for Humanity of High Point, High Point
Habitat for Humanity of Orange County, Hillsborough
Handmade in America, Asheville
Helpmate of Madison, Inc., Marshall
Highlands Camp & Conference Center, Highlands
H.O.M.E., Inc., Morganton
Home Care Connection, Inc., Pittsboro
HopeLine, Inc., Wake County
Hope Haven, Inc., Charlotte
Hospice for the Carolinas (99 counties)
Hospice of Burke County, Morganton
Hospice of Chatham County, Pittsboro
Hospice of the Piedmont, Inc., High Point
Hospice of Rockingham County, Wentworth
Hospice of Rutherford County, Forest City
Hospice of Winston-Salem, Winston-Salem
Housing for New Hope, Inc., Durham
Institute of Marine and Agriculture Research, Inc. (statewide)
Inter-Faith Council for Social Service, Chapel Hill
Inter-Faith Food Shuttle, Raleigh
International Visitors Council, RTP
Joint Orange-Chatham Community Action, Pittsboro
Thomas S. Kenan Institute for the Arts, Winston-Salem
Land Loss Prevention Project (statewide)
Latin American Association of N.C., Raleigh
Legal Services of North Carolina, Raleigh
Lenoir County United Way, Kinston
Lewis Rathbun Wellness Center, Asheville
Life Center, Lexington
Lincoln Cultural Center, Lincolnton
Literacy Council of Buncombe County, Asheville
Lutheridge/Lutherock Ministries, Inc., Arden
Macon County Hospice, Franklin
MAGIC Community Gardens, Asheville
MANNA Food Bank, Asheville
Mattamuskeet Foundation, Ayden
March of Dimes Birth Defects Foundation (statewide)
MAY Coalition, Spruce Pine
Mecklenburg Council on Adolescent Pregnancy, Charlotte

Groups Urging You to Support Incentives to Increase Charitable Giving
(Continued)

Mental Health Association in N.C. (28 counties)
Mental Health Association in Alamance County, Burlington
Methodist Home for Children, Raleigh
Mooresville South Iredell United Way, Mooresville
Mint Museum of Art, Charlotte
Mountain Area Hospice, Asheville
My Sister's House, Inc., Rocky Mount
N.C. Alliance for Arts Education, Carrboro
N.C. Alliance for the Mentally Ill (statewide)
N.C. Association of Community Development Corporations, (statewide)
N.C. Association of Independent Colleges & Universities (institutions in 25 counties)
N.C. Association of Rehabilitation Facilities (87 counties)
N.C. Association of Residential Child Care and Family Services (statewide)
N.C. Center for Nonprofits (statewide)
N.C. Child Advocacy Institute (statewide)
N.C. Child Care Resource & Referral Network (statewide)
N.C. Chiropractic Association (statewide)
N.C. Coalition of Farm and Rural Families (statewide)
N.C. Coalition Against Domestic Violence (statewide)
N.C. Coastal Land Trust, Wilmington
N.C. Community Foundation (statewide)
N.C. Council for Women (statewide)
N.C. District Council Assemblies of God, Inc., Selma
N.C. Environmental Defense Fund (statewide)
N.C. Equity (statewide)
N.C. Fair Share, Raleigh (7 counties)
N.C. Foundation for Public School Children (statewide)
N.C. Institute of Minority Economic Development (statewide)
N.C. Justice Center (statewide)
N.C. Literacy Council (statewide)
N.C. Low Income Housing Coalition (statewide)
N.C. Occupational Safety and Health Project, Durham
N.C. Partnership for Children (statewide)
N.C. Preservation Consortium (statewide)
N.C. REAL Enterprises (58 counties)
N.C. Rural Economic Development Center (statewide)
N.C. Student Rural Health Coalition (statewide)
N.C. Theatre Conference (statewide)
Nazareth Children's Home, Rockwell
New Beginnings, Raleigh
Northeastern Comm. Dev. Corp., Camden
Oasis of Love Homes, Inc., Jamestown
Open Door Ministries of High Point, Inc., High Point
Orange Community Housing Corp., Carrboro
Orange County Rape Crisis Center, Chapel Hill
Orange Enterprises Inc., Hillsborough
Pacolet Area Conservancy, Columbus
Palmer Drug Abuse Program of Robeson County, Lumberton
Pamlico-Tar River Foundation, Washington
Partnerships in Assistive Technology (statewide)
Patterson School, Lenoir
People's Alliance, Durham
Placing Animals Within Society, Bryson City
Pioneer Girl Scout Council, Gastonia
Placing Animals Within Society, Bryson City
Prevent Blindness North Carolina, Raleigh
Prevent Child Abuse N.C. (statewide)
Public School Forum of N.C. (statewide)
Randolph County Family Crisis Center, Asheboro
REACH of Haywood County, Waynesville
Redirections of Rockingham/Caswell Counties, Reidsville
Regal Ventures, Inc., Kings Mountain
Rocky Mount Cities In Schools, Rocky Mount
Ronald McDonald House of Durham, Inc., Durham
Ronald McDonald House of Winston-Salem, Inc., Winston-Salem
Rural Advancement Foundation International, Pittsboro
Project Avery Literacy, Newland
SAFEchild, Raleigh
Scarborough Nursery, Durham
Scenic North Carolina, Inc. (statewide)
SciWorks Science Center and Environmental Park, Winston-Salem
Second Chance Mission of Hope, Inc., Jacksonville
Senior Services, Inc., Winston-Salem
The Shepherd's Center of Greater Winston-Salem, Winston-Salem
Southeastern Community College Foundation, Whiteville
Southern Appalachian Highlands Conservancy, Asheville
Southern Highland Craft Guild, Asheville
St. Joseph's Historic Foundation, Inc., Durham
St. Mark's Incorporated, Charlotte
Summit House, Charlotte, Greensboro, Raleigh
Surry Medical Ministries Foundation, Inc., Mount Airy
Swiss Bear Downtown Development, New Bern
Transylvania County Historical Society, Brevard
Transylvania Literacy Council, Brevard
Triangle Community Foundation, Research Triangle Park (Chatham, Durham, Orange, Wake Counties)

Groups Urging You to Support Incentives to Increase Charitable Giving
(Continued)

Tri-County Industries, Inc., Rocky Mount
United Christian Ministries of Jackson County, Sylva
United Methodist Agency for the Retarded, Charlotte (Western North Carolina)
United Way of Asheville & Buncombe County, Asheville
United Way of Central Carolinas, Charlotte
United Way of Cumberland County, Fayetteville
United Way of Davidson County, Lexington
United Way of Forsyth County, Winston-Salem
United Way of Haywood County, Waynesville
United Way of Hoke County, Raeford
United Way of Iredell County, Statesville
United Way of Lincoln County, Lincolnton
United Way of Moore County, Southern Pines
United Way of North Carolina (represents local United Ways in 87 counties)
United Way of Pitt County, Greenville
United Way of Randolph County, Inc., Asheboro
United Way of Rutherford County, Spindale
United Way of Stanly County, Inc., Albermarle
United Way of Vance County, Henderson
United Way of Wayne County, Goldsboro
United Way of Wilkes County, N. Wilkesboro
UPLIFT, Inc., Greensboro
Upper Yadkin Valley Habitat for Humanity, Elkin
The Valle Crucis Conference Center, Valle Crucis
Very Special Arts North Carolina (statewide)
Wake County Literacy Council, Raleigh
Wake Interfaith Hospitality Network, Raleigh
Watauga United Way, Boone
Webster Enterprises, Sylva
We Care Outreach, Fayetteville
Western North Carolina Alliance, Asheville
Wing Haven Foundation, Charlotte
Winston-Salem Downtown Church Committee, Winston-Salem
The Winston-Salem Foundation, Winston-Salem
Womenfolk Unlimited, Hamlet
Women's Center of Wake County, Raleigh
Women's Resource Center, Hickory
World Care Organization (Ministry), Dallas
Yadkin County United Way, Yadkinville
YMCA of Greater Charlotte, Charlotte
YMCA of Greater Winston-Salem, Winston-Salem
YMCA of Wake County, Raleigh
YWCA of Greensboro, Greensboro
YWCA of High Point, High Point
The Yadkin/Pee Dee Lakes Project, Badin
Yellow Mountain Enterprises, Newland

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bill Sloggin	NC Bar Assoc.
Andy Romanet	N.C.L.M.
Bernard Allen	505
Alicia Gregory	Rep. Hurley
Ellen Whitaker	Intern - Rep. Decker
George Kiser	Citizen
Charles Collins	Reugnug
Jordan Deer	✓
Paul Zogry	OSBM
Patti Seawell	DOR
Don Holder	BIC
Bob [illegible]	N.C. Phys Ther Assoc
Melissa Horton	NC Phys Therapy Assoc

VISITOR REGISTRATION SHEET

House Finance — May 21, 1998

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ed Sansbury	Carolina Healthcare 4535 Fair Meadow Ln Ral. 27609
Lenie Mendenhall	Triangle Trigger-Point Therapy Ral, NC
Mary Jamison	NCGA-Clerk
Jane Kendall	N.C. Center for Nonprofits
Richard Garrett	Gov. Office
Danny Rogers	NCDOT
Rick Rosen	Body Therapy Inst. / Siler City
John D. Rust	NCFPC
Mark A. Lentz	NCSA
Steve Keane	NCMed. Soc.
ELLIS HANKINS	NCLM
Jim Blackburn	NC Assoc County Commrs

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Craig Souza	NCACC
Mike Olsen	NC State AFL-CIO
Jan Ramquist	NCSOS
Julius Pulley	MIT
Lisa Stenberg	NCSHA
Dr. Keith Bouchard	HealthEcology & NCSHA
Sam Taylor	Womble Carlyle
Amy Jo Bain	Smith Anderson
Beryl E. Wade	Gov
David Simmons	ZBA, PA
Dana Cowell	SEANC
Leslie Bevacqua	NCCBT

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
David Craft	MH Health System
John Bowdish	Zeb Alley P.A.
Stephen J. Bewers	NC Justice Center
[illegible]	NCAE
Harriet Diel	NCAE
J Barry Maxwell MD	Doctor of the Day (Wilmington NC)
Bryan G. Maxwell	Wilmington, NC

MINUTES

HOUSE COMMITTEE ON **FINANCE**

WEDNESDAY, MAY 20, 1998

9:00 A.M. ROOM 544-LOB

JOINT MEETING WITH SENATE MEMBERS

The House Committee on Finance met jointly with the Senate Finance Committee on Wednesday, May 20, 1998 at 9:00 a.m. in Room 544-LOB. A silent roll was taken for House members present, (roll list denotes members present).

Rep. Connie Wilson was presiding Chairperson and called the meeting to order, and introduced Pages for the day.

Secretary Rick Carlisle, Department of Commerce, was the guest speaker. He explained the purpose and the operation of the William (Bill) Lee Act. After his presentation, questions were entertained by House and Senate members.

Rep. Dedmon spoke about problems in his county regarding the tierring process not being accurate and its affect on jobs. He asked Sec. Carlisle if he was aware of the problems and what action is being taken to correct this. Sec. Carlisle advised that his Department is aware of the problem and it is being studied so adjustments can be made. Rep. B. Hunter commented on infrastructure for rural areas and the need for balanced economic growth. He asked what was being done to correct this for this 1998 short session. Sec. Carlisle advised that the water/sewer and natural gas needs must be improved in order to attract industry to North Carolina. His Department has asked for $32 million to help with this for this legislative session. Rep. Gamble shared concerns about his county and the tiering problem because of retirees that have moved in which caused the tiers to be off balance. Sec. Carlisle responded that the formula for tiering was inherited and they are looking at ways to adjust this using earned income. Rep. Cunningham also shared concerns and asked about enterprise zones. Sec. Carlisle told him that this will be addressed in the near future. Rep. Cunningham inquired if it will include grants and tax credits and Sec. Carlisle advised it would. Sen. Cochrane questioned gross receipts tax and the re-distributing of wealth for the Piedmont area of the State. Sec. Carlisle gave her reassurance that all aspects are being considered for improved for the entire State. Rep. Hill asked

about job qualities for low tier counties and high tier counties. Sec. Carlisle explained the rationality of quality of jobs. Rep. Hackney commented about traffic problems and building of new schools and the wisdom of people moving to high growing areas vs. rural areas. Sec. Carlisle agreed that people were naturally more attracted to urban areas vs. rural areas. Rep. Neely asked Sec. Carlisle for a copy of speech/presentation and Sec. Carlisle agreed to provide this for him. Rep. Goodwin commended the Department of Commerce for the improvements made in his county due to the Bill Lee Act and urged that improvements continue to be made, not only for his county but state-wide. Sen. Kerr also commended the work of the Department of Commerce, but shared frustrations and recommended moving forward to help balance the structure of the State. He feels we are heading for a two-tiered State. He shared concerns about education being a large factor and the need for infrastructure for water/sewer. He urged for a bi-partisan effort to help North Carolina. Sen. Bob Shaw shared expressed the same concerns as the other members had spoken about and urged that they need immediate attention.

Sec. Carlisle was then recognized for explanation of the Federal Express hub for North Carolina. After his comments, Sen. B. Shaw made additional comments regarding Federal Express. He advised that he has requested some figures from Federal Express in writing and has yet to receive them. He urged caution until some written information could be provided. Sen. L. Shaw spoke and feels we need to engineer for the needs of Eastern North Carolina. He hopes that Department of Commerce will take leadership in helping bring economic development. Rep. Carpenter shared the work of the Rural Infrastructure Development Committee. He advised of the support of the County Commissioners Association, the League of Municipalities and other groups state-wide that are supporting infrastructure development for North Carolina. He advised that a bill would be introduced this week from that committee. Sen. McDaniel spoke about fuel tax exemptions and court rulings and what legal considerations has been given to Federal Express for tax exemptions. Sec. Carlisle explained that Federal Express will not be given special treatment from other industries wishing to locate in North Carolina. Sen. Ballentine questioned the vitality of Global TransPark. Sec. Carlisle said a conclusion could not be drawn in connection of the Global TransPark. Rep. Berry was concerned about promises being made to get Federal Express to move to North Carolina and Sec. Carlisle explained that this is all contingent on legislation approval. Rep. Berry commented again and said that she feels it is the understanding to most citizens that this is a "done deal". She also asked what is missing from the GTP that Fed Ex is requiring. Sec. Carlisle replied that dual runways and interstate access was an important factor. Rep. Nichols asked what happens if this is not approved by the General Assembly. Sec. Carlisle responded that he couldn't answer that, but explained the importance of what was presented to Fed. Ex. Rep. Nichols asked if it was intended to put pressure on the General Assembly if this did not pass. Sec. Carlisle responded that was not the intent. Rep. Russell

spoke on the GTP and the road problems for this area. She explained the importance of rural infrastructure. Sen. Blust asked about the dual runways or the parallel runway being a requirement for Fed. Ex. Sec. Carlisle responded that only a Fed. Ex. Representative could answer that. Sen. Blust questioned the package which was presented to Fed. Ex. and asked if anyone else would be allowed to take advantage of the tax credits. He also asked when legislation will be available. Sec. Carlisle responded that legislation is being prepared now for the short session. Rep. Wilson questioned the fiscal impact and Sec. Carlisle advised it would be ready when the bill is prepared. Rep. Wood told about a meeting he attended and asked Sec. Carlisle if it was their practice to consult with legislators that are in the affected District. Sec. Carlisle advised they had been working with consultants, had spoken to Leadership of both Houses, and the Delegation from that area. Rep. Wood then asked if this would be a separate bill or rolled into another one. Sec. Carlisle advised it would be rolled in with another. Rep. Decker spoke on the runway situation and the tax credit. Sec. Carlisle responded to his comments. Re. Howard said she had requested a total cost for this project and asked if it had been generated from Department of Commerce. Sec. Carlisle advised they had worked with Department of Revenue. Rep. Howard wants to see figures to study for this short session and requested that Department of Commerce provide some figures to our Fiscal Staff this week. Rep. Brawley spoke on the GTP and said the General Assembly had not finished this project and urged the Department of Commerce to complete this.

The meeting adjourned at 10:15 a.m.

Rep. Connie Wilson, Chairperson

Cindy Brooks, Committee Clerk

AGENDA

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, MAY 20, 1998

9:00 A.M. ROOM 544-LOB

JOINT MEETING WITH SENATE

CALL TO ORDER:

REP. GRAY, CHAIRMAN

GUEST SPEAKER:

SECRETARY RICK CARLISLE, DEPARTMENT OF COMMERCE

ADJOURNMENT

VISITOR REGISTRATION SHEET

Finance — 5-20-98

ame of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Patti Stowell	DOR
Linda Shaw	Sen. Shaw's office (6 people)
Zeb Alley	2 DA PA
Lorin Tullian	Moore + Van Allen
Michelle Cook	(Weyerhaeuser
Dick Colton	attorney
BE Lunch	WSPPA
Alan Miles	Baker & Diller LLP
Willie Riddick	DOR
Katherine Dues	Electricities of NC
Andy Romanet	N.C. A. M.
Jim Blackburn	NC Assoc. Co Commrs

VISITOR REGISTRATION SHEET

FINANCE — 05-30-98

ame of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kathryn Sawyer	Commerce
Danny Rogers	NCDOT
Greg Rayford	NCDOR
Debra Swiren	NCDOR
Betty Deal	NCDOR
Ron Aycock	NC Assn Co. CPA
Laura Deaton Klauke	Common Sense
Tom Getz	Health Underwriters
James C Stasios	NC ALU
JY Summerell	NCAHU
M. Le Kittie	OSBM
[illegible]	OSBM

VISITOR REGISTRATION SHEET

Finance

ame of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Matt Osborne	AOC
Jim Brown	N.C. State Ports
Bill Bak	ETY
Steve Wittrin	OSBM
Paul Lamb	Lamb Consulting
J. Dickinson	DOC
Lynn Fitch-Cooper	GSO Chamber
Sabra Faires	Dept of Revenue
DAN GERLACH	BRC
Bill Scoggin	NC BAR ASSOC.
Kelli Kukura	DuPont
Olivia Gregory	Rep. Nucky

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Amy Fullbright	Hanton & Williams
Natalie Haskins	Charlotte Chamber

MINUTES

HOUSE COMMITTEE ON FINANCE

WEDNESDAY, MAY 13, 1998

9:00 A.M. ROOM 544-LOB

The House Committee on Finance met on Wednesday, May 13, 1998, at 9:00 a.m. in Room 544-LOB. A silent roll was taken (roll list denotes members present).

Rep. Gray called the meeting to order and welcomed members back to the short session.

UPDATE ON STATE/LOCAL RETIREES LAWSUIT - BAILEY CASE - AND THE IMPACT ON THE STATE BUDGET

Ms. Cindy Avrette, Research Division, was recognized to explain the Bailey Case to membership. (copy attached).

Rep. Brown was concerned about the uncertainty of not knowing how long and how much it will take to resolve this matter. Rep. Dickson also shared concerns. Rep. Nichols questioned the 1989 retirement formula. Mr. Stanley Moore, Fiscal Research Division, responded. Rep. Womble had a series of questions and comments. Rep. Gray and Ms. Avrette responded to those. Rep. Decker requested that staff prepare some scenarios for members to use for constituent calls and inquiries. Rep. Gray advised this would be taken care of. Rep. Gray also shared a copy of an editorial from his Winston Salem newspaper and advised members he would provide them a copy which would also be helpful in responding to questions. Discussion continued with questions and comments from Reps. Neely, Buchanan, Cunningham, Brown, Wood, Starnes, Nichols, Hackney, Womble and Berry. Ms. Avrette and Rep. Gray addressed these.

Mr. David Crotts, Fiscal Research Division, was recognized for his presentation of the fiscal impact on the State. (copy attached). After his presentation, members Brown, Decker, Wood, Cunningham, Ramsey, Hill, Neely, and Gamble asked various questions and made comments. Mr. Crotts addressed each one.

Rep. Gray advised that everyone would be kept up-to-date on this matter as new things materialized.

Meeting adjourned at 10:15.

Rep. Lyons Gray, Chairman

Cindy Brooks, Clerk

SIMULATED BUDGET OUTLOOK						
General Fund Expenditures and Revenues						
Recurring Items Only ($Millions)						
	BUDGET	SIMULATION				
	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04
REVENUES						
Revised Revenue Estimate *(note 1)*	$12,251.1	$12,977.2	$13,807.0	$14,718.4	$15,787.9	$16,859.4
Child Health Insurance Tax Credit		($64.5)	($65.2)	($65.6)	($66.0)	($66.4)
Impact of Bailey Decision	($128.6)	($125.4)	($122.3)	($119.2)	($116.2)	($107.7)
Total Availability	**$12,122.5**	**$12,787.3**	**$13,619.5**	**$14,533.6**	**$15,605.7**	**$16,685.3**
EXPENDITURES						
Recurring Expenditure Requirements *(note 2)*	$11,532.0	$11,828.0	$12,115.2	$12,387.0	$12,663.0	$12,956.3
Governor's Proposed Additional Cuts	($174.2)	($324.1)	($474.1)	($474.1)	($474.1)	($474.1)
Health Insurance for Children	$15.6	$24.0	$25.5	$27.1	$28.9	$30.7
Additional Considerations						
State Employees/Teacher Health Plan	$0.0	$93.2	$125.1	$289.1	$343.5	$343.5
Universities Enrollment growth	$13.7	$32.6	$61.4	$92.8	$127.9	$127.9
Comm.College Enrollment Growth	$1.4	$1.4	$0.1	$0.1	$0.1	$0.1
ADM Growth and Longevity	$35.6	$35.6	$35.6	$35.6	$35.6	$35.6
Teachers to National Average	$221.5	$495.2	$772.3	$884.5	$1,000.1	$1,119.2
Smart Start Expansion	$56.6	$134.2	$221.0	$234.0	$248.2	$248.2
State Employee Pay Increases *(note 3)*	$187.7	$331.5	$479.8	$630.9	$786.6	$947.1
Total Expenditures	**$11,889.9**	**$12,651.6**	**$13,361.9**	**$14,107.0**	**$14,759.8**	**$15,334.5**
Surplus (Shortage)	$232.6	$135.7	$257.6	$426.6	$845.9	$1,350.8

note 1: Consensus revenue estimates May 5, 1998 and FRD Model projections

note 2: Continuation Budget figures from Governor's Recommended Budget, not including expansion items

note 3: 4% for 1998-9 and 3% in later years

FRD May 13, 1998

COVER)

GENERAL FUND REVENUE FORECAST ($MILL.)
TABLE 1: BASELINE FORECAST PRIOR TO TAX LAW CHANGES

	Actual 95-96	Actual 96-97	Estimated 97-98	Estimated 98-99	99-00	00-01	01-02	02-03	03-04
TAX REVENUE:									
State Personal Income Growth (Economy)	7.1%	7.0%	6.7%	6.2%	6.3%	6.3%	6.3%	6.3%	6.3%
Personal Income Tax Growth		11.2%	12.4%	5.7%	7.0%	7.3%	7.5%	7.5%	7.5%
PERSONAL INCOME	$5,035.0	$5,597.2	$6,289.8	$6,650.3	$7,115.6	$7,636.1	$8,209.0	$8,822.9	$9,484.3
SALES & USE	2,960.2	3,179.5	3,366.6	3,561.9	3,773.1	3,996.9	4,233.9	4,485.1	4,751.1
CORPORATE INCOME:	673.8	717.9	808.8	812.1	843.7	891.3	941.1	978.1	1,043.9
FRANCHISE	355.9	387.8	401.4	424.1	448.8	475.1	503.0	532.8	564.3
INSURANCE	244.5	260.3	285.1	288.1	327.3	349.3	371.6	429.1	453.3
ALCOHOLIC BEVERAGES	145.5	150.2	154.6	157.2	159.8	162.6	165.5	168.4	171.4
INTANGIBLES TAX	124.4	124.5	124.6	124.7	124.8	124.9	125.0	125.1	125.2
INHERITANCE	112.9	132.1	137.8	153.2	164.5	176.6	189.6	203.6	218.6
SOFT DRINK	39.8	41.2	42.6	44.1	45.7	47.4	49.1	50.9	52.7
PRIVILEGE LICENSE	42.0	43.4	43.4	44.2	45.1	46.0	46.9	47.8	48.8
TOBACCO PRODUCTS	46.7	46.7	47.8	46.9	45.9	45.0	44.1	43.2	42.4
GIFT	11.0	12.6	20.9	17.6	19.4	21.2	23.0	24.8	13.3
OTHER	1.2	1.2	1.0	1.2	1.2	1.2	1.2	1.2	1.2
TOTAL-TAX REVENUE	$9,792.9	$10,694.4	$11,724.4	$12,325.6	$13,114.9	$13,973.5	$14,903.1	$15,913.0	$16,970.6
NONTAX REVENUE									
INVESTMENT INCOME	$197.3	$222.1	$242.0	$251.2	$266.3	$282.2	$299.2	$317.1	$336.2
JUDICIAL FEES	90.2	94.9	95.6	100.4	105.4	110.7	116.2	122.0	128.1
DISPROPORTIONATE SHARE RECEIPTS	76.0	100.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	65.3	68.0	70.0	72.1	74.3	76.5	78.8	81.1	83.6
INSURANCE DEPT.	14.9	14.0	15.6	16.2	16.9	17.5	18.2	19.0	19.7
TOTAL-NONTAX REVENUE	$443.7	$499.8	$423.2	$439.9	$462.8	$487.0	$512.4	$539.3	$567.6
TOTAL - TAX & NONTAX REVENUE	$10,236.6	11,194.2	$12,147.6	$12,765.5	$13,577.7	$14,460.5	$15,415.5	$16,452.3	$17,538.2
TRANSFERS:									
HIGHWAY TRUST FUND	$170.0	$170.0	$170.0	$170.0	$170.0	$170.0	$170.0	$170.0	$170.0
HIGHWAY FUND	11.1	11.9	12.6	13.4	14.2	15.1	16.0	16.9	17.9
TOTAL-TRANSFERS	$181.1	181.9	182.6	183.4	$184.2	$185.1	$186.0	$186.9	$187.9
TOTAL - GENERAL FUND REVENUE	$10,417.7	$11,376.1	$12,330.2	$12,948.9	$13,761.9	$14,645.6	$15,601.5	$16,639.2	$17,726.2

House Appropriations Analysis of Potential Nonrecurring Budget Availability

	($Mill.)
Ending Credit Balance Determination for 1997-98:	
Unappropriated Revenues from 1997 Session	$121.5
Estimated Reversions (Unexpended Appropriations)	100.0
Estimated Revenue Collection Surplus	561.5
Ending Credit Balance	$783.0
Earmarking of Ending Credit Balance:	
Repairs and Renovations	$145.0
Savings Reserve Account (Rainy-Day Fund)	21.6
Clean Water Trust Fund	50.9
Total Earmarking of Ending Credit Balance	$217.5
Unreserved Credit Balance	$565.5
Additions to Unreserved Credit Balance:	
DSS Reserve From 1997-98	$24.0
Unappropriated Balance From 1997 Session	48.9
Total-Additions to Unreserved Credit Balance	$72.9
Total Availability Prior to Actions by 1998 May Session	$638.4
Potential Other Adjustments to Availability:	
Governor's Proposed Cuts of April, 1998	-44.2
Nonrecurring Proposed Cut of April, 1998	1.1
Technical Change	0.7
Governor's Supplemental Cuts of May, 1998	11.1
Total-Potential Adjustments to Availability	($31.3)

Explanation of State/Local Retiree Lawsuit -- Bailey

TO: House Finance Committee
From: Legislative Staff
Date: May 12, 1998

Ruling. On May 8, 1998, the North Carolina Supreme Court ruled against the State in the Bailey case. The background for and history of this case are set out below. The North Carolina Supreme Court's decision means that the State will have to reimburse taxpayers for State income taxes paid on their State, local, and federal pensions since 1989, and exempt these pensions in future tax years for those taxpayers whose pensions had vested before August 12, 1989. The refunds and the exemption apply only to those benefits attributable to service performed before August 12, 1989, by those employees who were vested as of August 12, 1989[1]. The case applies only to State and local retirees but the same relief must be granted to federal retirees as well under the federal doctrine of intergovernmental tax immunities. The Court held that both protesters and nonprotesters are entitled to refunds.

The case now returns to the trial court to administer the refunds, determine attorneys fees, and resolve other matters. There are many unanswered questions. Staff of the Attorney General's Office, the Department of Revenue, and the General Assembly will continue researching the issues and provide answers as soon as possible.

Costs. The recurring cost of the exemption for State, local, and federal retirees could be a maximum of **$128.6 million annually**.[2] In addition, there would be a one-time cost of refunds for tax years 1989-97 to all State, local, and federal who paid taxes on benefits attributable to pre-1989 service. The total cost of refunds plus interest is estimated at nearly **$1.06 billion (one-time)**. The Court affirmed the lower court's order that 15% of the refunds must be deducted from the refunds, to be used to pay attorneys fees and costs and expenses related to the litigation and the administration of the refunds.

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[1] It may be impossible to determine how much of each post-1989 retiree's benefits is attributable to service before August 12, 1989. The State and local government retirement system may be able to make this calculation but the federal retirement system, and TIAA-CREF, which covers some state retirees, may not.

[2] This estimate includes all benefits, whether or not due to pre-1989 service and whether or not being paid to retirees who vested as of 1989, because a breakdown is not available at this time. Thus, the actual cost may be lower. An estimated $45.5 million of the total estimated cost would be attributable to State and local retirees and $83.1 million to federal retirees. This recurring cost would eventually phase out as 1989-vested retirees die.

It is not clear at this time whether these refunds must be made immediately or may be made in installments. The lower court opinion, affirmed by the Court, provided a complex mechanism combining tax credits and refunds. This mechanism may not be administrable as a practical matter. However the refunds are administered, the Department of Revenue will undoubtedly need additional funds for personnel and computer needs to carry out their duties in this matter.

30-Day Rule. The Court did not invalidate the 30-day rule completely, but appears to have held that if a taxpayer pays under protest and initiates litigation, all other similarly situated taxpayers benefit from the protest if the litigation succeeds. It is quite possible that this ruling would be applied to the intangibles tax nonprotesters who received no relief for the 1991-94 tax years and have appealed their case to the North Carolina Supreme Court. The cost of refunds to these nonprotesters, with interest, for the 1991-94 tax years would be approximately **$338.1 million (one-time)**. It seems less likely that it would be applied retroactively to the federal retiree nonprotesters who received some but not complete relief for the tax they paid on their retirement benefits for 1985-88.

Relief from USSC Unlikely. The State would probably have the right to ask the United States Supreme Court to review the case. Although the case was brought under federal constitutional provisions (prohibiting impairment of contracts and taking of property without just compensation), the State's defense was based on a State constitutional provision (prohibiting the State from contracting away its taxing power). Thus, because the basis for the rejection of the State's defense chiefly involves a State issue, rather than a federal issue, it may not be possible to have the case reviewed by the United States Supreme Court. If the State seeks review, we would probably not know whether review was granted until fall of 1998.

If it asks the United States Supreme Court to review the case, the State would probably also ask the North Carolina Supreme Court to stay (freeze) the judgment until the United States Supreme Court made a decision. It is not known whether a stay would be granted.

Background

In 1989, the United States Supreme Court ruled in Davis v. Michigan that the doctrine of intergovernmental tax immunity prohibits a state from taxing federal retirement income at a higher rate than State retirement income. Prior to 1989, North Carolina allowed a $3,000 income tax exclusion for federal and military retirees and allowed a full income exclusion for State retirement income. To comply with the Davis decision, the General Assembly in 1989 allowed all government retirees, both State and federal, a $4,000 exclusion. The General Assembly increased the amount of retirement benefits paid to State retirees to

help offset the impact of the tax on their retirement income. It also gave private retirees a $2,000 exclusion.

In 1990, State and local retirees sued North Carolina regarding the 1989 change of their tax exemption from a 100% exemption to an exemption for the first $4,000 in government retirement benefits received each year. This case is known as Bailey I. The plaintiffs claimed that the reduction of their retirement benefits was unconstitutional and sought refunds of taxes paid in 1989 and later years. Upon appeal from a trial court decision in favor of the plaintiffs, the North Carolina Supreme Court ruled that the plaintiffs were entitled to no relief because they had failed to comply with the 30-day protest rule; the United States Supreme Court declined to review the decision.

In 1992, Bailey II was filed as a class action on behalf of all State and local retirees who individually complied with the 30-day protest requirement for the 1989, 1990, and 1991 tax years. The plaintiffs' chief claim was that the taxation of State and local retirement income is a breach of contract and violates the federal constitutional prohibition against impairment of contracts. The State's response is that (1) the tax exemption for state and local pension income that existed prior to 1989 was not a contractual right and (2) the North Carolina Constitution does not allow the General Assembly to contract away its taxing authority.

In May 1995, the trial court ruled in favor of the plaintiffs, holding that taxation of retirement benefits earned and vested before August 12, 1989, is a breach of contract, violates the State and federal constitutional prohibitions against impairment of contracts, violates the State prohibition against retrospective tax laws, violates the federal due process clause, and, with regard to judges, retrospectively reduces their salaries in violation of the North Carolina Constitution. The court voided the 1989 act of the General Assembly that repealed the 100% tax exemption for State and local retirement benefits, as it applies to benefits earned and vested before August 12, 1989.

The State appealed the trial court decision and expedited the appeal to the North Carolina Supreme Court (bypassing the North Carolina Court of Appeals). The Court heard arguments in September 1996 but did not issue its opinion until May 1998.

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The case now returns to the trial court to administer the refunds, determine attorneys fees, and resolve other matters. There are many unanswered questions. Staff of the Attorney General's Office, the Department of Revenue, and the General Assembly will continue researching the issues and provide answers as soon as possible.

Costs. The recurring cost of the exemption for State, local, and federal retirees could be a maximum of **$128.6 million annually**.[2] In addition, there would be a one-time cost of refunds for tax years 1989-97 to all State, local, and federal who paid taxes on benefits attributable to pre-1989 service. The total cost of refunds plus interest is estimated at nearly **$1.06 billion (one-time)**. The Court affirmed the lower court's order that 15% of the refunds must be deducted from the refunds, to be used to pay attorneys fees and costs and expenses related to the litigation and the administration of the refunds.

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Background

In 1989, the United States Supreme Court ruled in Davis v. Michigan that the doctrine of intergovernmental tax immunity prohibits a state from taxing federal retirement income at a higher rate than State retirement income. Prior to 1989, North Carolina allowed a $3,000 income tax exclusion for federal and military retirees and allowed a full income exclusion for State retirement income. To comply with the Davis decision, the General Assembly in 1989 allowed all government retirees, both State and federal, a $4,000 exclusion. The General Assembly increased the amount of retirement benefits paid to State retirees to

help offset the impact of the tax on their retirement income. It also gave private retirees a $2,000 exclusion.

In 1990, State and local retirees sued North Carolina regarding the 1989 change of their tax exemption from a 100% exemption to an exemption for the first $4,000 in government retirement benefits received each year. This case is known as Bailey I. The plaintiffs claimed that the reduction of their retirement benefits was unconstitutional and sought refunds of taxes paid in 1989 and later years. Upon appeal from a trial court decision in favor of the plaintiffs, the North Carolina Supreme Court ruled that the plaintiffs were entitled to no relief because they had failed to comply with the 30-day protest rule; the United States Supreme Court declined to review the decision.

In 1992, Bailey II was filed as a class action on behalf of all State and local retirees who individually complied with the 30-day protest requirement for the 1989, 1990, and 1991 tax years. The plaintiffs' chief claim was that the taxation of State and local retirement income is a breach of contract and violates the federal constitutional prohibition against impairment of contracts. The State's response is that (1) the tax exemption for state and local pension income that existed prior to 1989 was not a contractual right and (2) the North Carolina Constitution does not allow the General Assembly to contract away its taxing authority.

In May 1995, the trial court ruled in favor of the plaintiffs, holding that taxation of retirement benefits earned and vested before August 12, 1989, is a breach of contract, violates the State and federal constitutional prohibitions against impairment of contracts, violates the State prohibition against retrospective tax laws, violates the federal due process clause, and, with regard to judges, retrospectively reduces their salaries in violation of the North Carolina Constitution. The court voided the 1989 act of the General Assembly that repealed the 100% tax exemption for State and local retirement benefits, as it applies to benefits earned and vested before August 12, 1989.

The State appealed the trial court decision and expedited the appeal to the North Carolina Supreme Court (bypassing the North Carolina Court of Appeals). The Court heard arguments in September 1996 but did not issue its opinion until May 1998.

SIMULATED BUDGET OUTLOOK						
General Fund Expenditures and Revenues						
Recurring Items Only ($Millions)						
	BUDGET	SIMULATION				
	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04
REVENUES						
Revised Revenue Estimate *(note 1)*	$12,251.1	$12,977.2	$13,807.0	$14,718.4	$15,787.9	$16,859.4
Child Health Insurance Tax Credit		($64.5)	($65.2)	($65.6)	($66.0)	($66.4)
Impact of Bailey Decision	($128.6)	($125.4)	($122.3)	($119.2)	($116.2)	($107.7)
Total Availability	**$12,122.5**	**$12,787.3**	**$13,619.5**	**$14,533.6**	**$15,605.7**	**$16,685.3**
EXPENDITURES						
Recurring Expenditure Requirements *(note 2)*	$11,532.0	$11,828.0	$12,115.2	$12,387.0	$12,663.0	$12,956.3
Governor's Proposed Additional Cuts	($174.2)	($324.1)	($474.1)	($474.1)	($474.1)	($474.1)
Health Insurance for Children	$15.6	$24.0	$25.5	$27.1	$28.9	$30.7
Additional Considerations						
State Employees/Teacher Health Plan	$0.0	$93.2	$125.1	$289.1	$343.5	$343.5
Universities Enrollment growth	$13.7	$32.6	$61.4	$92.8	$127.9	$127.9
Comm.College Enrollment Growth	$1.4	$1.4	$0.1	$0.1	$0.1	$0.1
ADM Growth and Longevity	$35.6	$35.6	$35.6	$35.6	$35.6	$35.6
Teachers to National Average	$221.5	$495.2	$772.3	$884.5	$1,000.1	$1,119.2
Smart Start Expansion	$56.6	$134.2	$221.0	$234.0	$248.2	$248.2
State Employee Pay Increases *(note 3)*	$187.7	$331.5	$479.8	$630.9	$786.6	$947.1
Total Expenditures	**$11,889.9**	**$12,651.6**	**$13,361.9**	**$14,107.0**	**$14,759.8**	**$15,334.5**
Surplus (Shortage)	$232.6	$135.7	$257.6	$426.6	$845.9	$1,350.8

note 1: Consensus revenue estimates May 5, 1998 and FRD Model projections

note 2: Continuation Budget figures from Governor's Recommended Budget, not including expansion items

note 3: 4% for 1998-9 and 3% in later years

FRD May 13, 1998

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GENERAL FUND REVENUE FORECAST ($MILL.)
TABLE 1: BASELINE FORECAST PRIOR TO TAX LAW CHANGES

	Actual 95-96	Actual 96-97	Estimated 97-98	Estimated 98-99	99-00	00-01	01-02	02-03	03-04
TAX REVENUE:									
State Personal Income Growth (Economy)	7.1%	7.0%	6.7%	6.2%	6.3%	6.3%	6.3%	6.3%	6.3%
Personal Income Tax Growth		11.2%	12.4%	5.7%	7.0%	7.3%	7.5%	7.5%	7.5%
PERSONAL INCOME	$5,035.0	$5,597.2	$6,289.8	$6,650.3	$7,115.6	$7,636.1	$8,209.0	$8,822.9	$9,484.3
SALES & USE	2,960.2	3,179.5	3,366.6	3,561.9	3,773.1	3,996.9	4,233.9	4,485.1	4,751.1
CORPORATE INCOME:	673.8	717.9	808.8	812.1	843.7	891.3	941.1	978.1	1,043.9
FRANCHISE	355.9	387.8	401.4	424.1	448.8	475.1	503.0	532.8	564.3
INSURANCE	244.5	260.3	285.1	288.1	327.3	349.3	371.6	429.1	453.3
ALCOHOLIC BEVERAGES	145.5	150.2	154.6	157.2	159.8	162.6	165.5	168.4	171.4
INTANGIBLES TAX	124.4	124.5	124.6	124.7	124.8	124.9	125.0	125.1	125.2
INHERITANCE	112.9	132.1	137.8	153.2	164.5	176.6	189.6	203.6	218.6
SOFT DRINK	39.8	41.2	42.6	44.1	45.7	47.4	49.1	50.9	52.7
PRIVILEGE LICENSE	42.0	43.4	43.4	44.2	45.1	46.0	46.9	47.8	48.8
TOBACCO PRODUCTS	46.7	46.7	47.8	46.9	45.9	45.0	44.1	43.2	42.4
GIFT	11.0	12.6	20.9	17.6	19.4	21.2	23.0	24.8	13.3
OTHER	1.2	1.2	1.0	1.2	1.2	1.2	1.2	1.2	1.2
TOTAL-TAX REVENUE	$9,792.9	$10,694.4	$11,724.4	$12,325.6	$13,114.9	$13,973.5	$14,903.1	$15,913.0	$16,970.6
NONTAX REVENUE									
INVESTMENT INCOME	$197.3	$222.1	$242.0	$251.2	$266.3	$282.2	$299.2	$317.1	$336.2
JUDICIAL FEES	90.2	94.9	95.6	100.4	105.4	110.7	116.2	122.0	128.1
DISPROPORTIONATE SHARE RECEIPTS	76.0	100.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	65.3	68.0	70.0	72.1	74.3	76.5	78.8	81.1	83.6
INSURANCE DEPT.	14.9	14.0	15.6	16.2	16.9	17.5	18.2	19.0	19.7
TOTAL-NONTAX REVENUE	$443.7	$499.8	$423.2	$439.9	$462.8	$487.0	$512.4	$539.3	$567.6
TOTAL - TAX & NONTAX REVENUE	$10,236.6	11,194.2	$12,147.6	$12,765.5	$13,577.7	$14,460.5	$15,415.5	$16,452.3	$17,538.2
TRANSFERS:									
HIGHWAY TRUST FUND	$170.0	$170.0	$170.0	$170.0	$170.0	$170.0	$170.0	$170.0	$170.0
HIGHWAY FUND	11.1	11.9	12.6	13.4	14.2	15.1	16.0	16.9	17.9
TOTAL-TRANSFERS	$181.1	181.9	182.6	183.4	$184.2	$185.1	$186.0	$186.9	$187.9
TOTAL - GENERAL FUND REVENUE	$10,417.7	$11,376.1	$12,330.2	$12,948.9	$13,761.9	$14,645.6	$15,601.5	$16,639.2	$17,726.2

House Appropriations Analysis of Potential Nonrecurring Budget Availability

	($Mill.)
Ending Credit Balance Determination for 1997-98:	
Unappropriated Revenues from 1997 Session	$121.5
Estimated Reversions (Unexpended Appropriations)	100.0
Estimated Revenue Collection Surplus	561.5
Ending Credit Balance	$783.0
Earmarking of Ending Credit Balance:	
Repairs and Renovations	$145.0
Savings Reserve Account (Rainy-Day Fund)	21.6
Clean Water Trust Fund	50.9
Total Earmarking of Ending Credit Balance	$217.5
Unreserved Credit Balance	$565.5
Additions to Unreserved Credit Balance:	
DSS Reserve From 1997-98	$24.0
Unappropriated Balance From 1997 Session	48.9
Total-Additions to Unreserved Credit Balance	$72.9
Total Availability Prior to Actions by 1998 May Session	$638.4
Potential Other Adjustments to Availability:	
Governor's Proposed Cuts of April, 1998	-44.2
Nonrecurring Proposed Cut of April, 1998	1.1
Technical Change	0.7
Governor's Supplemental Cuts of May, 1998	11.1
Total-Potential Adjustments to Availability	($31.3)

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Finance — 5-13-98

ame of Committee — Date

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Danny Rogers	NC DOT
Mike Kelley	5th Budget
Betty Gamble	citizen
Cam Cree	BPMHL
S Markham	EGHS - TC
Ellen Whitaker	Intern
Becky Stout	PPAB
Kim Smith	NCLM
David Simmons	ZDA, PA
NANCY POMERANZ	DOR
Leanne Winner	NCSBA

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Finance

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Alice Garland	Electricities
Mary Carmichael	Mecklenburg County
Ron Aycock	NC Assn County Comm
J. Coleman	AT&T
D. Rego	N.C.A.C.C.
Alicia Gregory	Rep. Nucky I Intern

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CHARLES FRANCIS	Woods & Francis, PLLC
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Jim Blackburn	NC Association of County Commissioners
Larry Cope	SEANC
Shirley Bowling	SEANC
Joshi Belanger	NCCBI

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Finance

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RE McNair	Georgia Pacific
Willie Riddick	DOR